

No. 15054

United States
Court of Appeals
for the Ninth Circuit

UNITED STATES OF AMERICA,

Appellant,

VS.

BENJAMIN HARRISON and JONES STEVE-
DORING COMPANY.

Appellees.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California.
Southern Division.

FILED

MAY 24 1956



No. 15054

United States
Court of Appeals
for the Ninth Circuit

UNITED STATES OF AMERICA,

Appellant,

vs.

BENJAMIN HARRISON and JONES STEVE-
DORING COMPANY,

Appellees.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Amendment to Libel.....	7
Answer	8
Answer to Petition.....	22
Attorneys, Names and Addresses of.....	1
Certificate of Clerk to Record on Appeal.....	114
Decree	36
Exhibit, Respondent's:	
B—Contract Between Jones Stevedoring Co. and the United States Federal Government	98
Findings of Fact and Conclusions of Law.....	27
Libel, Filed December 1, 1954.....	3
Notice of Appeal.....	38
Order, Filed August 22, 1955.....	27
Petition to Bring in Third Party.....	15
Statement of Points and Designation of Record on Appeal (U.S.C.A.).....	116
Statement of Points Upon Which Appellant Intends to Rely (U.S.D.C.).....	39

INDEX	PAGE
Transcript of Proceedings.....	41
Witnesses, Libelant's:	
Harrison, Benjamin, Jr.	
—direct	43
—cross	71
—redirect	79, 82
—recross	81
Jensen, Christian	
—direct	82
—cross	91, 93
—redirect	95
Witness, Respondent's:	
Greening, Rollin E.	
—direct	106
—cross	108

NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

LLOYD H. BURKE,

United States Attorney;

KEITH R. FERGUSON,

Special Assistant to the Attorney General;

WILLIAM H. THORNTON, JR.,

Special Attorney, Department of Justice;

Post Office Building,

San Francisco, California.

For Appellees:

GLADSTEIN, ANDERSEN, LEONARD &
SIBBETT,

240 Montgomery Street,

San Francisco, California;

For Appellee Benjamin Harrison;

JOHN H. BLACK,

EDWARD R. KAY,

233 Sansome Street,

San Francisco, California,

For Appellee Jones Stevedoring Co.

In the United States District Court for the Northern
District of California, Southern Division in
Admiralty

No. 27015

BENJAMIN HARRISON,

Libelant,

vs.

UNITED STATES OF AMERICA,

Respondent.

LONGSHOREMAN'S LIBEL IN PERSONAM
FOR DAMAGES

Under the Suits in Admiralty Act, the Public
Vessels Act, and the General Maritime Law

The libel of Benjamin Harrison, longshoreman,
against United States of America and the SS
Private John R. Towle, owned, managed, operated,
maintained and controlled by said respondent, and
against all persons lawfully intervening in their
interests, in a cause of action for damages, alleges:

I.

That the vessel SS Private John R. Towle, is a
vessel of United States registry and now is and
during all of the times herein mentioned was owned,
managed, maintained, operated and controlled by
respondent, United States of America.

II.

That said respondent has an office and principal
place of business in the City and County of San

Francisco, State of California, and is within the jurisdiction of the above-entitled Court.

III.

That libelant brings and maintains this action pursuant to the provisions of 46 USCA §§741 to 752, commonly known as the Suits in Admiralty Act, 46 USCA §§781 790, commonly known as the Public Vessels Act, and under the general maritime law.

IV.

That on October 14, 1954, libelant was employed aboard said vessel by Jone Stevedoring Company as a longshoreman, and was a business invitee of respondent upon said vessel on said date.

V.

That on said date, at or about the hour of 9:15 a.m., and while libelant was engaged in the course and scope of his employment as a stevedore in the shelter deck, No. 2 hold, of said vessel, libelant was caused to and he did slip on oil which had been permitted to accumulate on the said deck of said vessel, severely injuring libelant's left leg. That libelant is informed and believes and therefore alleges that said injuries will result in his being permanently partially disabled, all to libelant's general damage in the sum of \$30,000.00.

VI.

That said injuries were directly and proximately caused by the carelessness and negligence of the respondent, its employees and agents, in permitting said oil to accumulate on the said deck without re-

moving the same or without providing sawdust or other materials to minimize the dangerous condition created by the presence of said oil on said deck.

VII.

That at the time of said accident libelant was gainfully employeed as a longshoreman, as aforesaid, earning approximately \$115.00 per week. As a direct and proximate result of said accident, libelant has been unable to work since the date of said accident, thereby incurring a loss of wages in the approximate sum of \$670.00 to date; and libelant is informed and believes and therefore alleges that he will suffer future wage loss as a direct and proximate result of said accident, in an amount presently unknown, and prays leave to amend this libel and insert herein the total wage loss, when ascertained, or offer proof thereof at the time of trial herein.

VIII.

That in order to treat said injuries, incurred as aforesaid, libelant has, and he is informed and believes and therefore alleges that in the future he will be obliged to incur medical and allied expenses in a sum presently unknown to libelant, who prays leave to amend this libel and insert herein the total amount of such medical and allied expenses, when ascertained, and to offer proof thereof at the time of trial herein.

IX.

That prior to the filing of this libel, libelant filed claim with and against respondent United States of America in and about the matters herein set

forth, which said claim has been administratively disallowed.

X.

That, all and singular, the allegations hereof are true and are within the admiralty and maritime jurisdiction of the above-entitled Court.

Wherefore, libelant prays, etc.

As and for a Second, Separate, and Additional Cause of Action Libelant Alleges:

I.

Incorporates by reference, as though here set forth at length, all the allegations contained in the first cause of action herein.

II.

That by reason of the matters hereinabove alleged, said vessel was rendered unsafe and unseaworthy as to libelant, and the respondent failed and neglected to furnish libelant with a safe place in which to work, all to libelant's general damage in the sum of \$30,000.00.

Wherefore, libelant prays that process in due form of law according to the course of this Honorable Court and in causes of admiralty and maritime jurisdiction may issue against respondent and that it be required to appear and answer upon oath all and singular the matters aforesaid; that this Honorable Court may be pleased to decree the payment by respondents to libelant of the sum of \$30,670.00,

plus future wage loss, plus medical expenses, when ascertained, plus costs of suit herein, and for such other and further relief as is meet and just in the premises.

GLADSTEIN, ANDERSEN,
LEONARD & SIBBETT,

/s/ EWING SIBBETT,
Proctors for Libelant.

Duly Verified.

[Endorsed]: Filed December 1, 1954.

[Title of District Court and Cause.]

AMENDMENT TO LIBEL

Comes now libelant herein, and amends his libel on file herein by adding thereto the following sentence to paragraph I thereof:

“That at all times herein mentioned libelant was and is a resident of Alameda County, State of California, and within the jurisdiction of the above-entitled Court.”

Dated: April 18, 1955.

GLADSTEIN, ANDERSEN,
LEONARD & SIBBERT,

/s/ EWING SIBBETT,
Proctors for Libelant.

[Endorsed]: Filed April 18, 1955.

[Title of District Court and Cause.]

ANSWER

Comes now the United States of America, respondent above named, and for answer to the libel on file herein admits, denies and alleges as follows:

I.

Answering unto Article I of said libel respondent, United States of America, admits that USNS Private R. Towle is now and during all times mentioned in the libel was owned, managed, maintained, operated and controlled by respondent, United States of America; denies each and every, all and singular, the allegations of said Article I not herein otherwise admitted or denied.

II.

Answering unto Article II of said libel, respondent, United States of America, denies each and every, all and singular, the allegations thereof.

III.

Answering unto Article III of said libel, respondent, United States of America, alleges that the matter set forth therein raises questions of law for the Court which are not required to be answered by libellant.

IV.

Answering unto Article IV of said libel, respondent, United States of America, admits that libellant was employed on board the USNS Private John R. Towle by Jones Stevedoring Company as a long-

shoreman; denies each and every, all and singular, the allegations of Article IV not herein otherwise admitted or denied.

V.

Answering unto Article V of said libel, respondent, United States of America, denies each and every, all and singular, the allegations thereof.

VI.

Answering unto Article VI of said libel, respondent, United States of America, denies each and every, all and singular, the allegations thereof.

VII.

Answering unto Article VII of said libel, respondent, United States of America, denies each and every, all and singular, the allegations thereof.

VIII.

Answering unto Article VIII of said libel, respondent, United States of America, denies each and every, all and singular, the allegations thereof.

IX.

Answering unto Article IX of said libel, respondent, United States of America, admits that, prior to the filing of the libel herein, libelant filed claim with respondent; denies each and every, all and singular, the allegations of Article IX not herein otherwise admitted or denied.

X.

Answering unto Article X of said libel, respondent, United States of America, denies each and every, all and singular, the allegations thereof.

Answering Unto Libelant's Alleged Second Cause of Libel On File Herein, Respondent, United States of America, Denies, Admits and Alleges as Follows:

XI.

Answering unto Article I of the alleged second cause of libel, respondent, United States of America, refers to all of the admissions and denials and allegations contained in Articles I through X of respondent's answers to the first cause of libel and incorporates the same herein by reference thereto as if the same were set forth herein in full.

XII.

Answering to Article II of the alleged second cause of libel, respondent, United States of America, denies each and every, all and singular, the allegations thereof.

Further Answering Unto the Libel Herein and for A First Separate and Affirmative Defense Thereto Respondent, United States of America, Alleges as Follows:

XIII.

That on or about 1 January 1954, Jones Stevedoring Company entered into a written contract, designated DA-04-197 TC-2616 with respondent, United States of America, which said contract, with changes immaterial herein, was at all times mentioned in the said libel, and now is, in full force and effect. That the terms and conditions of the said contract,

a copy of which is in the possession of Jones Stevedoring Company, and a copy of which will be produced at the trial, are hereby made a part hereof by reference as though fully set forth herein. That by the terms of the said contract, Jones Stevedoring Company agreed to perform from time to time all the duties of a stevedore on any vessel of the United States which the respondent might designate, such duties to include the loading and discharging of cargo. At Clause 12-a the said contract provides, in part, that Jones Stevedoring Company:

“Shall be responsible for and shall hold the Government harmless from any and all loss, damage, liability and expense for cargo, vessels, piers, or any other property of every kind and description, whether or not owned by the Government, or bodily injury to or death of persons occasioned either in whole or in part by the negligence or fault of the Contractor, his officers, agents or employees in the performance of work under this contract. The general liability and responsibility of the Contract—or under this clause are subject only to the following specific limitations:

(b) The Contractor shall not be responsible to the government for and does not agree to hold the Government harmless from loss or damage or bodily injury to or death of persons:

(1) If the unseaworthiness of the vessel or failure or defect of the gear or equipment furnished by the Government contributed

jointly with the fault or negligence of the contractor in causing such damage, injury or death, and the Contractor, its officers, agents, and employees, by the exercise of due diligence, could not have discovered such unseaworthiness or defect of gear or equipment, or through the exercise of due diligence could not otherwise have avoided such damage, injury, or death.

(2) If the damage, injury or death resulted solely from an act or omission of the Government or its employees or resulted solely from proper compliance by officers, agents, or employees of the Contractor with specific directions of the Contracting Officer.”

XIV.

That on 14 October 1954, pursuant to the terms of the said Contract No. DA-04-197 TC-2616, respondent, United States of America, requested Jones Stevedoring Company to perform stevedoring services on board the USNS Private John R. Towle, and Jones Stevedoring Company undertook, pursuant to the terms and conditions of the said Contract, to perform the aforesaid stevedoring services, and did, for the purpose of rendering such services, take exclusive custody and control over the operation of discharging cargo from the said vessel.

XV.

That at the time of the alleged occurrence of the injuries described in said libel, Jones Stevedoring

Company was engaged in performing work on board the USNS Private John R. Towle, and in furnishing labor, services, material, equipment, supplies and facilities incident thereto, pursuant to and under the terms of the said contract. That at the said time and place, the officers, agents and employees of Jones Stevedoring Company were solely and exclusively in control of the said vessel, its gear and appurtenances including the holds and hatchways about which libelant was working at the time of occurrence of the injuries alleged in the libel. That if libelant was injured while performing work aboard the said vessel or otherwise or at all, he was injured while performing work aboard the said vessel in the course of his employment by Jones Stevedoring Company and in the performance of the said contract.

Further Answering Unto the Libel on File Herein and for A Second Separate and Affirmative Defense Thereto, Respondent, United States of America, Alleges as Follows:

XVI.

That at the time and place of the injury alleged in the libel herein, libelant so carelessly and negligently conducted himself that any and all injuries sustained by libelant were solely and proximately the result of the carelessness and negligence of libelant in the premises and that none of the injuries or damages alleged were caused or contributed to in any manner through any fault or negligence

of respondent, United States of America, its servants, agents, officers, or employees or by any unseaworthiness of the USNS Private John R. Towle.

Further Answering Unto the Libel on File Herein and for a second Separate and Affirmative Defense Thereto, Respondent, United States of America, Alleges As Follows:

XVII.

That if the libelant has been injured or damaged as alleged in the libel or otherwise or at all, such injuries and damages were solely and proximately the result of the carelessness and negligence of Jones Stevedoring Company, respondents impleaded, its servants, agents, officers, or employees.

Further Answering Unto the Libel On File Herein and for A Fourth Separate and Affirmative Defense Thereto, Respondent, United States of America, Alleges As Follows:

XVIII.

That if libelant was injured or damaged as alleged in the libel or otherwise or at all, such injuries or damages were the proximate result of risks of employment assumed by libelant under the existing circumstances and conditions, all of which circumstances, conditions and risks were open, obvious and apparent and were known to libelant, or should have been known to libelant.

Wherefore, respondent, United States of America,

prays that the libel herein against it be dismissed with costs.

LLOYD H. BURKE,

United States Attorney;

/s/ KEITH R. FERGUSON,

Special Assistant to the
Attorney General;

/s/ WILLIAM H. THORNTON, JR.,

Special Attorney, Department of Justice, Proctors
for Respondent, United States of America.

Affidavit of Mail attached.

[Endorsed]: Filed May 2, 1955.

In the United States District Court for the North-
ern District of California, Southern Division
In Admiralty No. 27015

BENJAMIN HARRISON,

Libelant,

vs.

UNITED STATES OF AMERICA,

Respondent,

and

JONES STEVEDORING COMPANY,

Respondent Impleaded.

PETITION TO BRING IN THIRD
PARTY UNDER RULE 56

To the Honorable, the Judges of the United States
District Court for the Northern District of Cali-
fornia, Southern Division, Sitting in Admiralty:

The petition of the United States of America, respondent herein, to implead Jones Stevedoring Company, as a third party respondent, under Admiralty Rule 56, in the above-entitled cause, civil and maritime, respectfully shows:

I.

That petitioner, United States of America, is a sovereign nation.

II.

Upon information and belief that at all times hereinafter mentioned Jones Stevedoring Company was, and now is, a corporation organized and existing under the laws of the State of California, and that the said corporation has a principal place of business in the City of San Francisco, State of California, and within the jurisdiction of this Honorable Court.

III.

That a libel in the above-entitled cause was filed by Benjamin Harrison against petitioner, United States of America, wherein libelant claims the sum of \$30,000 for general damages together with special damages for personal injuries; and that a copy of the said libel is hereto attached, marked Exhibit "A," and is by reference made a part hereof as though fully set forth herein.

IV.

That petitioner is filing its answer to the said libel denying all liability to libelant and the issues

raised continue pending without trial or adjudication.

V.

That on or about 1 January, 1954, respondent impleaded, Jones Stevedoring Company, entered into a written contract designated Contract DA-04-197 TC-2616 with petitioner, United States of America, which said contract with changes immaterial herein was at all times mentioned in the said libel and now is in full force and effect, the obligations and liabilities of which contract have been duly assumed by the third-party respondent herein. That the said contract, a copy of which is in the possession of third-party respondent, and a copy of which will be produced at the trial is hereby made a part hereof by reference as though fully set forth herein. That by the terms of the said contract, respondent impleaded agreed to perform from time to time general stevedoring services on any vessel designated by the respondent, United States of America. At Clause 12-a, the said contract provided in part as follows:

“The contractor shall be responsible for and shall hold the Government harmless from any and all loss, damage, liability and expense for cargo, vessels, piers, or any other property of every kind and description, whether or not owned by the Government, or bodily injury to or death of persons occasioned either in whole or in part by the negligence or fault of the Contractor, his officers, agents or employees in the performance of work under this contract. The general liability and responsibility of

the Contractor under this clause are subject only to the following specific limitations.”

Clause 12-b:

“The Contractor shall not be responsible to the Government for and does not agree to hold the Government harmless from loss or damage to property or bodily injury to or death of persons:

“(1) If the unseaworthiness of the vessel or failure or defect of the gear or equipment furnished by the Government contributed jointly with the fault or negligence of the Contractor in causing such damage, injury or death, and the Contractor, its officers, agents and employees, by the exercise of due diligence, could not have discovered such unseaworthiness or defect of gear equipment, or through the exercise of due diligence could not otherwise have avoided such damage, injury, or death.

“(2) If the damage, injury or death resulted solely from an act or omission of the Government or its employees or resulted solely from proper compliance by officers, agents, or employees of the Contractor with specific directions of the Contracting Officer.”

V.

That on 14 October, 1954, pursuant to the terms of the said Contract No. DA-04-197 TC-2616, respondent, United States of America, requested respondent impleaded, Jones Stevedoring Company,

to discharge cargo from the USNS Private John R. Towle. That respondent impleaded, under the terms and conditions of the said contract, undertook the removal from the USNS Private John R. Towle of certain cargo and, for the purpose of performing such stevedoring services, took exclusive custody and control of the holds and hatchways in and about the said ship.

VI.

At the time of the alleged occurrence of the injuries described in the libel, respondent impleaded was engaged in performing work aboard the USNS Private John R. Towle, and in furnishing labor, services, material, equipment, supplies and facilities incident thereto, pursuant to and under the terms and conditions of Contract No. DA-04-197 TC-2616. That at the said time and place the hatchways and cargo areas about which libelant was working, and which were connected with the happening of the alleged injuries to the libelant, were in the sole and exclusive custody and control of respondent impleaded, its officers, agents and employees under the terms of the said contract. That if libelant was injured in the manner alleged in said libel, he was injured while performing work on board the said vessel in the course of his employment by respondent impleaded and in the performance of the said contract.

VII.

That if libelant sustained injuries as alleged in the libel, which is denied, such injuries sustained by libelant were solely and proximately caused by the

carelessness and negligence of respondent impleaded, its officers, agents and employees, and by their failure to perform in accordance with terms and conditions of Contract No. DA-04-197 TC-2616, in that the areas of the said vessel where libelant was working when allegedly injured were not provided with proper safeguards, and that respondent impleaded failed to use reasonable care for the prevention of accidents likely to occur in the absence thereof, due to the nature of the work then and there being undertaken; and by the improper, careless and negligent manner in which respondent impleaded, its officers, agents, employees, including the libelant, conducted themselves and their activities on board the said vessel.

VIII.

That if petitioner, United States of America, is under any liability by reason of any of the matters alleged in the libel herein, such liability was solely and proximately the result of fault and negligence and breach of contract on the part of respondent impleaded, Jones Stevedoring Company, its officers, agents and employees, including libelant; and that by reason thereof, any and all such liability should be borne by respondent impleaded in accordance with the terms and conditions of Contract No. DA-04-197 TC-2616 between respondent impleaded and petitioner herein above set out, and that respondent impleaded is liable to petitioner by way of full indemnity over.

IX.

That all and singular the premises are true and

within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, petitioner prays that process in due form of law according to the course and practice of this Honorable Court in causes of admiralty and maritime jurisdiction may issue against respondent impleaded citing it to appear and answer all and singular the matters alleged in this petition and in the libel herewith exhibited; that respondent impleaded be proceeded against as if originally made a party herein; that if the Court shall find that libelant is entitled to a decree for damages against petitioner, United States of America, then that petitioner have a decree, with costs, over against respondent impleaded for all damages and costs awarded libelant against petitioner; that the Court dismiss the said libel as against the petitioner with costs herein, and that petitioner may have such other and further relief and redress as to the Court may seem just.

LLOYD H. BURKE,
United States Attorney;

/s/ KEITH R. FERGUSON,
Special Assistant to the At-
torney General;

/s/ WILLIAM H. THORNTON, JR.,
Special Attorney, Department of Justice, Proctors
for Respondent, United States of America.

Affidavit of Mail attached.

[Endorsed]: Filed May 2, 1955.

[Title of District Court and Cause.]

ANSWER TO PETITION

Comes now Jones Stevedoring Company, respondent impleaded, and answering the petition of the United States of America, respondent herein, alleges as follows:

I.

Admits the allegations of article I.

II.

Admits the allegations of article II.

III.

Answering the allegations of article III, respondent impleaded denies all of the allegations contained in said libel marked "Exhibit A," and will answer the same at length hereinafter.

IV.

The allegations of article IV require no answer.

V.

Answering the allegations of article V respondent impleaded alleges that on or about January 1, 1954, it entered into a written contract with the United States of America for stevedoring services to be rendered by respondent impleaded. Said contract is referred to and all of the provisions of said contract designated DA-04-197 TC 2616 are referred to and incorporated herein by reference thereto as if the same were set forth herein at length.

VI.

Answering the allegations of the second paragraph numbered V, said respondent impleaded admits the allegations of said article.

VII.

Answering the allegations of article numbered VI, respondent impleaded denies the allegations contained therein.

VIII.

Answering the allegations of article numbered VII, respondent impleaded denies the allegations contained therein.

IX.

Answering the allegations of article numbered VIII, respondent impleaded denies the allegations contained therein.

X.

Answering the allegations of article numbered IX, respondent impleaded denies the allegations contained therein.

Further answering said petition herein, respondent impleaded alleges that at the time of the happening of said accident to libelant herein on October 14, 1954, said libelant was employed by respondent impleaded as a longshoreman and that said respondent impleaded had secured compensation insurance for the benefit and protection of its employees pursuant to the Longshoremen's and Harbor Workers' Compensation Act, Section 901, etc.; that pursuant to said provisions of the Longshoremen's and Harbor Workers' Compensation Act there has been paid

to said libelant as and for compensation, a total sum of \$145.00 and as and for medical benefits, the total sum of \$57.85; that the above-entitled court has no jurisdiction to award any damages over against this respondent impleaded in the event that said respondent United States of America is found guilty of carelessness or negligence in and about the operation and maintenance of said vessel USNS Private John R. Towle.

Answer to Libel

Comes now the respondent impleaded and answering the libel herein which was referred to in said petition and incorporated in said petition as follows:

As to the First Cause of Action:

I.

Admits that the vessel USNS Private John R. Towle was owned, managed, maintained, operated and controlled by the United States of America.

II.

Admits the allegations of article II.

III.

Admits the allegations of article III.

IV.

Admits the allegations of article IV.

V.

Answering the allegations of article V, said respondent impleaded denies that it in any way was

responsible for or caused injury to said libelant and denies the allegations of article V insofar as they refer to, charge or concern respondent impleaded. Specifically denies the respondent has been damaged in the sum of \$30,000.00 or in any other sum or sums or otherwise or at all.

VI.

Denies the allegations of article VI insofar as the same refer to, charge or concern this respondent impleaded.

VII.

Answering the allegations of article VII respondent impleaded admits that said libelant was earning approximately \$115.00 per week prior to his said accident and further answering the allegations of article VII this respondent impleaded alleges that it has paid compensation and medical benefits to said libelant pursuant to the Longshoremen's and Harbor Workers' Compensation Act and denies the remaining allegations contained in article VII.

VIII.

Answering the allegations of article VIII respondent impleaded alleges that pursuant to the Longshoremen's and Harbor Workers' Compensation Act, it has expended money for medical services to said libelant.

IX.

Respondent impleaded has no information concerning the allegations of article IX.

X.

Denies the allegations of article X.

As to the Second Cause of Action:

I.

Respondent impleaded refers to all of the admissions, denials and allegations contained in its answer to the first cause of action and incorporates the same herein by reference thereto as if the same were set forth herein at length.

II.

Answering the allegations of article II this respondent impleaded denies that it in any way caused the vessel to be unsafe or unseaworthy and denies the allegations contained therein as they refer to, charge or concern this respondent impleaded. Specifically denies that libelant has been damaged in the sum of \$30,000.00 or in any other sum or sums or otherwise or at all.

Wherefore, Jones Stevedoring Company, respondent impleaded, prays that said petition and libel be dismissed, together with its costs of suit.

/s/ JOHN H. BLACK,

/s/ EDW. R. KAY,

Proctors for Respondent
Impleaded.

Duly verified.

[Endorsed]: Filed July 12, 1955.

[Title of District Court and Cause.]

ORDER

It Is Hereby Ordered that a decree be entered in the sum of \$2,000.00 in favor of the Libelant and against Respondent, United States of America, upon the first and second causes of action stated in the libel, in that the Respondent was negligent and that the vessl was unseaworthy.

A decree shall also be entered in favor of the Respondent-Impleaded, Jones Stevedoring Company, against the Respondent, United States of America, since the Respondent-Impleaded was not negligent or at fault in any manner contributing to the injury in whole or in part and could not have avoided the injury by the exercise of due diligence. The Libelant was not negligent or at fault in any manner, in whole or in part, and could not have avoided the injury by the exercise of due diligence.

/s/ O. D. HAMLIN,

United States District Judge.

Dated: August 22nd, 1955.

[Endorsed]: Filed August 22, 1955.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on regularly to be heard before the Court on August 11, 1955, the Honorable Oliver

D. Hamlin, Judge, presiding, sitting without a jury. The libelant was present in person and represented by his counsel, Ewing Sibbett, Esq., of the firm of Gladstein, Andersen, Leonard & Sibbett, the respondent being represented by United States Attorney Lloyd H. Burke, Keith R. Ferguson, Special Assistant to the Attorney General, and William H. Thornton, Special Attorney, Department of Justice, and the respondent-impleaded being represented by Henry Schaldach, Esq. Thereupon oral and documentary evidence was introduced by and on behalf of each of the parties hereto and at the close of all of the evidence oral arguments were made by counsel for the respective parties, and the cause was thereupon by the Court taken under advisement, and the Court, having considered all of the testimony and the arguments of counsel and all of the evidence, and being fully advised in the premises, now makes the following

Findings of Fact

I.

It is true that on October 14, 1954, the USNS Private John R. Towle was a public vessel of United States and was during all of the times mentioned in the libel herein owned, managed, maintained, operated and controlled by respondent United States of America.

II.

It is true that at the time of the filing of the libel herein, and during all of the intervening times,

libelant was, and has been, a resident of the County of Alameda, State of California, and of the above-entitled district.

III.

It is true that petitioner United States of America is and was a sovereign nation.

IV.

It is true that at all times referred to in respondent's Petition to Bring in Third Party Under Rule 56, the Jones Stevedoring Company, a corporation, was and now is a corporation organized and existing under the laws of the State of California, and it is true that the corporation at all times referred to in said Petition and libel had a principal place of business in the City of San Francisco, State of California, and within the jurisdiction of this Honorable Court.

V.

It is true that on or about January 1, 1954, Jones Stevedoring Company, a corporation, respondent-impleaded, entered into a written contract with respondent United States of America, designated Contract DA-04-197 TC-2616, which said contract was at all times mentioned in the Petition herein in full force and effect, whereunder respondent-impleaded agreed to do certain stevedoring work; that the said contract provides in part as is alleged in Paragraph V of the impleading Petition of respondent United States of America.

VI.

It is true that on the 14th day of October, 1954, respondent-impealed was engaged in discharging cargo from the USNS Private John R. Towle pursuant to request by respondent United States of America; that respondent-impealed, through its agents, servants and employees, boarded the said USNS Private John R. Towle for the sole and exclusive purpose of providing stevedoring services and unloading cargo from said vessel. It is not true that respondent-impealed was in exclusive custody and/or control of the holds and hatchways in and about the said vessel.

VII.

It is true that on October 14, 1954, libelant was employed as a longshoreman aboard said vessel and libelant was then and there an employee of respondent-impealed Jones Stevedoring Company, with average weekly earnings of \$111.50, and was rendering services for the respondent United States of America in discharging cargo from said vessel, and that on said date said vessel was tied alongside a dock at Benecia, California.

VIII.

It is true that at the time of the injury to libelant, respondent-impealed was engaged in performing stevedoring operations aboard the USNS Private John R. Towle under said contract. It is not true that the respondent-impealed was in sole or exclusive or in any custody or control of the hatchway and cargo areas on said vessel about which or near

where libelant was working under the terms of or pursuant to said contract, or otherwise, or at all. It is true that libelant was injured aboard said vessel while performing work in the course and his scope of employment by respondent-impleaded.

IX.

It is true that on said date, at or about the hour of 9:15 a.m., and while libelant was engaged in the course and scope of his employment as a stevedore in the shelter deck number two hold of said vessel, libelant was caused to and he did slip on oil which had been permitted to accumulate on the said deck of said vessel, injuring libelant's left leg.

X.

It is true that by reason of the premises, said vessel was on October 14, 1954, in an unsafe and unseaworthy condition insofar as libelant was concerned.

XI.

It is true that said injury was solely, directly and proximately caused by the unseaworthiness of the said vessel and the negligence and carelessness of the respondent, United States of America, its agents and employees, in permitting said oil to accumulate on said deck, well knowing of the presence of said oil on said vessel, such presence constituting a hazard to libelant and other persons working on said deck.

XII.

It is true that as a result of such injuries, libelant was unable to engage in his usual occupation as a

longshoreman for a period of approximately five weeks. It is true that although libelant has been working regularly since he returned to work approximately five weeks after said accident, libelant continues to suffer some impairment of motion and some discomfort in his left knee.

XIII.

It is true that for the first three or four weeks following said accident, libelant suffered severe pain as a result of said injury and libelant continues to suffer some discomfort in his left knee.

XIV.

It is true that libelant received workmen's compensation benefits from the insurance carrier for respondent-impleaded, Jones Stevedoring Company, in the amount of \$145.00, and medical services were furnished by said carrier for said injury in the reasonable sum of \$162.85.

XV.

It is true that libelant was entirely free from any negligence on his part in connection with the aforementioned accident, and that said accident was caused solely by the negligence and carelessness of respondent United States of America, its employees and agents, and in the failure of said vessel to furnish libelant with a safe and seaworthy vessel upon which to perform his duties as a stevedore.

XVI.

It is not true that said injury to libelant was solely and/or directly and/or proximately caused by

the carelessness and/or negligence of Jones Stevedoring Company, its officers, agents and employees. It is not true that Jones Stevedoring Company failed to perform in accordance with the terms and conditions of Contract No. DA-04-197 TC-2616. It is not true that the areas of said vessel where libelant was working when injured were not provided by said Jones Stevedoring Company with proper safeguards, and it is not true that Jones Stevedoring Company failed to use reasonable care for the prevention of accidents likely to occur for any reason. It is not true that libelant's injuries were caused or contributed to in whole or in part by the improper and/or careless and/or negligent manner in which respondent-impleaded, its officers, agents or employees, conducted themselves or their activities on board said vessel.

XVII.

It is true that all and singular the premises are within the admiralty and maritime jurisdiction of the above-entitled Court.

XVIII.

From the foregoing recitation and Findings of Fact, the Court makes the following

Conclusions of Law

I.

That this Court has jurisdiction of the parties and the subject matter herein by virtue of the Public Vessels Act (46 U.S.C.A., s.s. 781, 790).

II.

That by reason of the premises, said vessel was, on October 14, 1954, in an unsafe and unseaworthy condition insofar as libelant was concerned.

III.

That the injury to libelant was solely and proximately caused by the negligence of the respondent and the unseaworthiness of the vessel.

IV.

That libelant was not negligent or at fault in any manner contributing to the injury in whole or in part and could not have avoided the injury by the exercise of due diligence.

V.

That there was no negligence or fault on the part of respondent-impleaded, Jones Stevedoring Company, a corporation, which proximately, or to any degree or extent, or jointly with the unseaworthiness of the vessel, or at all, caused or contributed to the said accident or injuries to said libelant.

VI.

That the respondent-impleaded, Jones Stevedoring Company, could not have avoided the injury to libelant by the exercise of due diligence.

VII.

That libelant is entitled to a decree for damages against respondent United States of America in the total sum of \$2,000.00.

VIII.

That libelant is entitled to recover his costs of suit herein.

IX.

That the respondent-impleaded, Jones Stevedoring Company, is not liable to libelant nor to respondent United States of America for the whole or any part of said loss or damage.

X.

That the respondent-impleaded, Jones Stevedoring Company, a corporation, is entitled to a Decree of Dismissal of the Petition of the United States of America to Bring in Third Party Under Rule 56.

Dated: September 13, 1955.

/s/ O. D. HAMLIN,

United States District Judge.

[Endorsed]: Filed September 13, 1955.

In the District Court of the United States for the
Northern District of California, Southern Division

No. 27015 in Admiralty

BENJAMIN HARRISON,

Libelant,

vs.

UNITED STATES OF AMERICA,

Respondent,

and

JONES STEVEDORING COMPANY,

Respondent-Impleaded.

DECREE

This cause came on regularly to be heard before the Court on August 11, 1955, the Honorable O. D. Hamlin, Judge, presiding, sitting without a jury. The libelant was present in person and represented by his counsel, Ewing Sibbett, Esq., of the firm of Gladstein, Anderson, Leonard & Sibbett, the respondent being represented by United States Attorney Lloyd H. Burke, Keith R. Ferguson, Special Assistant to the Attorney General, and William H. Thornton, Special Attorney, Department of Justice, and the respondent-impleaded being represented by Henry Schaldach, Esq. Thereupon oral and documentary evidence was introduced by and on behalf of each of the parties hereto and at the close of all of the evidence oral arguments were made by

counsel for the respective parties, and the cause was thereupon by the Court taken under advisement, and the Court, having made and filed its Findings of Fact and Conclusions of Law herein:

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the libelant above named, Benjamin Harrison, do have and recover of and from the respondent, United States of America, the sum of Two Thousand Dollars (\$2,000) plus costs of suit;

It Is Further Ordered, Adjudged and Decreed that respondent United States of America, a sovereign, take nothing from respondent-impleaded, Jones Stevedoring Company, a corporation, on its Petition to Bring in Third Party Under Rule 56; and It Is Further Ordered, Adjudged and Decreed that said Petition to Bring in Third Party be and it is hereby dismissed.

Dated: September 13.

/s/ O. D. HAMLIN,
United States District Judge.

[Endorsed]: Filed September 13, 1955.

Entered September 14, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Clerk of the Above-Entitled Court:

To: Gladstein, Anderson, Leonard & Sibbett and
Ewing Sibbett, Esquire, 240 Montgomery Street,
San Francisco, California, Proctors for Libel-
ant;

To: John H. Black and Edward R. Kaye, and
Henry Schaldach, Esquires, 233 Sansome Street,
San Francisco, California, Proctors for Re-
spondent-Impleaded:

Please Take Notice, that the United States of America, respondent in the above-entitled action, does hereby appeal to the United States Court of Appeals for the Ninth Circuit, from all that part of the Decree of this Court entered and filed with the Clerk of the above-entitled Court, on September 13, 1955, which orders, adjudges and decrees that respondent United States of America take nothing from respondent-impleaded, Jones Stevedoring Company, a corporation, on its Petition to Bring in Third Party under Rule 56, and from all of that part of said Decree of this Court entered and filed with the said Clerk of the above-entitled Court on September 13, 1955, which orders, adjudges and decrees that said Petition to Bring in Third Party be dismissed and from every part of said portion of said Decree.

LLOYD H. BURKE,
United States Attorney;

/s/ KEITH R. FERGUSON,

Special Assistant to the At-
torney General;

/s/ WILLIAM H. THORNTON, JR.,

Special Attorney, Department
of Justice.

Affidavit of Mail attached.

[Endorsed]: Filed December 8, 1955.

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH APPELLANT INTENDS TO RELY

The above-named respondent, United States of America, who is petitioner and appellant herein, not having designated the complete record and all the proceedings and evidence in the action for inclusion in the record on appeal, hereby assigns errors in the proceedings, Findings of Fact and Conclusions of Law and Final Decree and states the points upon which it intends to rely on appeal as follows:

I.

The District Court erred in finding and holding that the libelant's injury was solely and proximately caused by appellant's negligence and the unseaworthiness of the USNS Private John R. Towle.

II.

The District Court erred in finding and holding that there was no negligence or fault on the part of appellee, Jones Stevedoring Company, which proximately or to any degree or extent, or jointly with

the unseaworthiness of the USNS Private John R. Towle, or at all, caused or contributed to the accident or injuries of the libelant.

III.

The District Court erred in finding and holding that appellee could not have avoided injury to the libelant by the exercise of due diligence.

IV.

The District Court erred in failing to find and hold that appellee is liable to indemnify the appellant as a matter of general law.

V.

The District Court erred in failing to find and hold that appellee is liable to indemnify appellant pursuant to the express terms of Contract DA-04-197 TC-2616.

VI.

The District Court erred in dismissing appellant's Impleading Petition.

LLOYD H. BURKE,

United States Attorney;

/s/ KEITH R. FERGUSON,

Special Assistant to the Attorney General;

/s/ WILLIAM H. THORNTON, JR.,

Special Attorney, Dept. of Justice.

Affidavit of Mail attached.

[Endorsed]: Filed March 1, 1956.

The United States District Court, Northern District
of California, Southern Division
No. 27015

BENJAMIN HARRISON,

Libelant,

vs.

UNITED STATES OF AMERICA,

Respondent,

and

JONES STEVEDORING CO.,

Impleaded-Respondent.

Before: Hon. Oliver D. Hamlin, Judge.

REPORTER'S TRANSCRIPT

Thursday, August 11, 1955

Appearances:

Proctors for Libelant:

GLADSTEIN, ANDERSEN, LEONARD
& SIBBETT, by
EWING SIBBETT, ESQ.

For the Respondent, United States of America:

LLOYD H. BURKE,
U. S. Attorney, by
WILLIAM H. THORNTON, JR., ESQ.,
Special Assistant.

Proctors for Respondent-Impleaded:

JOHN H. BLACK, and
EDWARD R. KAY, by
HENRY SCHALDACH, ESQ.

The Clerk: Benjamin Harrison, Libelant, versus United States of America and Jones Stevedoring Co., Respondents, for trial.

Will respective counsel please state their names for the record?

Mr. Sibbett: For the libelant, Ewing Sibbett.

Mr. Thornton: For the respondent, William H. Thornton, Jr.

Mr. Sibbett: I might say, Judge, there is another party in this proceeding. There is a complaint in intervention, Mr. Schaldach representing the Stevedoring Co. He said he would be a little late.

(Discussion between Court and counsel omitted.)

The Court: Proceed.

Mr. Sibbett: May it please the Court, this is a longshoreman's libel in personam for personal injuries suffered on October 14th of last year while the longshoreman was working aboard a government vessel, the SS Private John R. Towle. The libel is in two counts, the first count being based on negligence, alleging that the injuries were suffered as a result of the negligence of the United States and its representatives in failing to provide a safe place for the longshoreman to work.

The second count is based on absolute obligation, or unseaworthiness, charging that the vessel was unseaworthy. [3*]

The United States has impleaded the Stevedoring Company that was the employer of the longshore-

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

man at the time of the accident, alleging that, in substance, if there is any liability in this case on the part of the Government that by contract between the Government and the Stevedoring Company the Government has a right over against the Stevedoring Company. Mr. Schaldach represents the Stevedoring Company.

Do you gentlemen have any statement to make at this time?

Mr. Thornton: No.

Mr. Schaldach: No.

Mr. Sibbett: Will you take the stand, Mr. Harrison?

BENJAMIN HARRISON, JR.

the libelant herein, called as a witness in his own behalf, sworn.

The Court: State your name, please.

A. Benjamin Harrison, Jr.

Direct Examination

By Mr. Sibbett:

Q. Where do you live, Mr. Harrison?

A. 843-60th Street, Oakland, California.

Q. Will you speak up a little bit or move closer to the microphone so we all can hear you. We all have to hear you back here.

A. 843-60th Street, Oakland.

Q. How old are you, sir? [4] A. 39.

Q. Are you married or single?

A. At the present time I am married.

Q. But you are separated from your wife, as I understand it? A. That is right.

(Testimony of Benjamin Harrison, Jr.)

Q. Were you and your wife living together at the time of this accident? A. Yes, we were.

Q. What is your present occupation?

A. Stevedore.

Q. How long have you been a stevedore?

A. January 27, 1944.

Q. Has that been your only and continuous occupation since that date? A. It has.

Q. Has all that work been here in the Bay Area?

A. Yes, around this area.

Q. In other words, you haven't worked in ports in the South and the Gulf or Seattle or any place but San Francisco?

A. Since that particular date?

Q. No, since you went to work.

A. I worked four days in Pedro since that time, during 1950, when work was slack.

Q. With that small exception your work has always been around in the Bay Area? [5]

A. That is right.

Q. Can you tell us briefly what type of work you did before you were a longshoreman and when you went to work?

A. I worked in the shipyards here, Bethlehem Shipyard over in Alameda, as a welder. And I worked at Moore's Shipyard here back in 1943 as a welder. Before that I worked for a company in New Orleans, Louisiana, about ten or eleven years.

Q. Have you ever done any work in and about garages and in and about automotive equipment?

A. I do most all my mechanical work myself.

(Testimony of Benjamin Harrison, Jr.)

Q. Are you familiar with automobile engines and transmissions and differentials?

A. Well, I am acquainted with most all types of work in many types of a car. Anything that gets wrong with my car, I do all my work. I can put my hand on exactly what is wrong.

Q. As I understand it, Mr. Harrison, on October 14th of last year you were dispatched by the longshore hiring hall to work aboard the SS John R. Towle, is that correct? A. That is right.

Q. Where was that vessel at that time?

A. Benecia.

The Court: Where? Benecia?

A. Yes.

Q. (By Mr. Sibbett): What time did you and your fellow workmen board that vessel on that [6] morning?

A. Well, when we go to Benecia we usually go about 7:00 and get there about 8:30—8:00 o'clock. Start working at 8:00 o'clock.

Q. Is that your best recollection as to the approximate time you went to work this particular morning?

A. On the ship you start to work at 8:00 at most all jobs.

Q. You were a member of a longshore gang at that time, is that right? A. That is right.

Q. Who was your gang boss or gang foreman?

A. Mr. C. Jensen.

Q. Do you recall what particular hold of that vessel you were assigned to work that morning?

(Testimony of Benjamin Harrison, Jr.)

A. Hatch No. 1.

Q. And when you went to work that morning at hatch No. 1, was the hatch opening of the main deck open or did you have to open it up?

A. It was open.

Q. Where were you sent below, what deck, to work? A. Shelter deck.

The Court: What deck?

A. Shelter deck.

Q. (By Mr. Sibbett): That is the deck immediately below the main deck? A. Yes.

The Court: I still didn't get it. [7]

Mr. Sibbett: Shelter deck, your Honor.

Q. And was the work of your gang that particular day to be loading cargo or discharging cargo from that hatch? A. Discharging cargo.

Q. What type cargo was on the shelter deck that morning which you were to discharge?

A. Jeeps.

Q. Jeeps? A. Yes.

Q. Were these, so far as you could tell, military jeeps? A. Oh, yes. Army jeeps.

Q. And how were these jeeps stationed there in that shelter deck when you went down there?

A. These jeeps were double decked. In other words, one front end at the back end of another.

Q. In other words, there would be one jeep with four wheels on the deck, is that correct?

A. Yes.

Q. And another with two?

A. Up on the other.

(Testimony of Benjamin Harrison, Jr.)

The Court: Up on what?

A. In the body of another jeep.

Mr. Sibbett: In the bed of the forward jeep.
“Piggyback,” I guess, you might term it.

Q. And was the whole shelter deck filled with these jeeps when [8] you went down there?

A. It were.

Q. How were these—strike that.

Were these jeeps tied together in any way so that they wouldn't move during transit?

A. Yes, they have them lashed with wire and we have to cut them loose.

Q. Lashed with wire and you have to cut them loose?
A. Yes.

Q. When you went down there that morning onto that deck, did you notice anything unusual or out of the ordinary about the condition of the deck itself?

A. Yes, I notice a lot of oil was on the deck and all around on the floor.

Q. On the floor or on the deck?
A. Yes.

Q. What kind of oil did this appear to be? I mean, was it grease or was it liquid oil?

A. Well, it's a liquid, a regular machine oil like lubricating.

Q. Was it all over the deck or just in patches?

A. Well, it was covered mostly over the whole deck.

Q. Could you tell by your own observation where this oil was coming from or had come from?

A. To my estimation it came out of the transmis-

(Testimony of Benjamin Harrison, Jr.)

sion and the crankcase; in other words, just like you have a main bearing [9] leaking oil underneath your car.

Q. With your experience with automotive engines as you have told us about, did it appear to you this oil had come from the jeeps?

A. Yes, it had.

Q. When you went down and observed this condition of the deck that you have told us about, what, if anything, did you do about it?

A. The first thing, I spoke about getting sawdust.

The Court: I didn't hear that. Read it.

(Answer read by the reporter.)

Q. (By Mr. Sibbett): Who did you speak to about that? A. My foreman, Mr. Jensen.

Q. What did Mr. Jensen do, if anything?

A. He said, "Well, I will ask the walking boss to see if we can get some."

Q. Then, as I understand it, Mr. Jensen was down on the shelter deck with you at that time?

A. No, he was over the hatch.

Q. Looking down the hatch?

A. At the present time looking down when I saw this.

Q. Then did he disappear for a few minutes?

A. Yes, he disappeared for a few minutes and come back and replied the walking boss said they didn't have any.

Q. Then what, if anything, transpired? [10]

(Testimony of Benjamin Harrison, Jr.)

A. I told him to try to get some sand or something because the deck was pretty slippery with all the oil around the deck, and he went off and came back in a short while and didn't have any sand. The walking boss said to take it easy, "We must do the best we can, take it easy."

Q. Was there any discussion at that time between—strike that.

How many men were working with you in the hold on that particular morning?

A. On this job, six men. Six of us.

Q. And in addition the gang boss?

A. Yes. Two winch drivers.

Q. After the gang boss came back and said they didn't have any sand, either, was there any other discussion about this condition?

A. Well, he said, "Well, maybe we should knock off, but it is up to the men. What should we do?" So the walking boss said, "Well, take it easy. Do the best we can. We will try to get it out."

Q. "Try to get it out," meaning the jeeps?

A. Yes. "Take your time."

Q. Then did you proceed to discharge the jeeps from that shelter deck?

A. Yes, we proceeded on with the operation.

Q. And did you get them all out of there without incident? [11]

A. We got them all out of the shelter deck and started to uncover.

Q. You will have to explain to us what you mean

(Testimony of Benjamin Harrison, Jr.)

by "uncover." I don't think any of us have done longshore work. What do you mean?

A. Going down to the next deck below the shelter deck.

Q. In other words, you got all the jeeps out of the shelter deck and you were preparing to go down to the next deck, is that correct? A. Yes.

Q. And as I understand it——

Mr. Sibbett: Gentlemen, if I lead a little bit on the mechanics of this thing, object at any time. I think it might facilitate things.

Q. (By Mr. Sibbett): As I understand it, that involves first of all taking off the wooden hatch boards that fit in between steel beams.

A. Yes.

Q. Did you get all those hatch boards off?

A. Yes, we did. Started taking off the strongbacks.

The Court: Started what?

A. Taking out the strongbacks.

Q. (By Mr. Sibbett): As I understand it, Mr. Harrison, the strongbacks are the big steel beams which run across the hatch opening athwartship, and there are four, five, six of [12] them, depending on the size of the hatch opening.

The function of these big hatch beams is two-fold: One, to constitute a lateral support while the ship is at sea, to strengthen that deck because there is a big square opening there; and also to support the hatch boards in between so that there is a completely closed area there, is that correct?

(Testimony of Benjamin Harrison, Jr.)

A. That is correct.

Q. Did you and partners start to take out one of these strongbacks or strong beams?

A. We had taken out three strongbacks, and had four in that deck.

Q. There were four on that deck?

A. Yes. Four beams. We were laying the last beam on the inshore side to turn it over.

Mr. Sibbett: Just a minute. At this point, I think, to assist the Court in visualizing all these beams, will you—well, would you mark this for identification, first?

The Court: Libelant's Exhibit 1 for identification.

(Whereupon, photograph referred to above was marked Libelant's Exhibit No. 1 for identification.)

Q. (By Mr. Sibbett): Now, Mr. Harrison, I will show you a photograph which the Government has taken of other strongbacks. That isn't the strongback that was on this particular ship on this particular morning, but the Government states that it is their understanding that they are substantially the same type [13] as the strongbacks we have been talking about.

I will ask you to look at this photograph and tell me—this photograph shows three strongbacks lying along the bulwark of the vessel. Are these the type of strongbacks you were handling on that particular morning?

A. Yes, they are.

(Testimony of Benjamin Harrison, Jr.)

Mr. Sibbett: I will ask that this be marked as Libellant's exhibit in evidence.

The Court: It may be admitted and marked with the same number.

(Thereupon, Libellant's Exhibit No. 1, formerly marked for identification, was admitted into evidence.)

The Court: Do you want to examine him about it?

Mr. Sibbett: No. It is just so your Honor will have the general idea (handing exhibit to the Court).

Q. All right, Mr. Harrison, we have you and your partner starting to handle the last of the four strong beams. As I understand it, of course, these are much too heavy to handle by hand. The winch driver drops a bridle down and that is hitched onto each end of the strongback, and he pulls the strongback out of the slots to raise it out of the slots it is resting in, and a longshoreman on one end of the beam and a longshoreman on the other end of the beam assists the winch driver in taking it alongside of the hatch opening and putting it down on the deck, is that correct? [14]

A. That is right. We assist him in landing the strongback in the wing.

Q. As you were assisting the winch driver on this particular day, in this particular instance, and getting this last strongback off into the wing and off

(Testimony of Benjamin Harrison, Jr.)

away from the hatch opening, tell us in your own words what happened.

A. My partner and I landed the strongback in the wing of the ship and unhooked the bridle which was used to bring out the beam, let the winch driver go, and my partner and I attempted to turn, and slipped over.

Q. You were going to attempt to put it on its side?

A. Yes. We started, at which time the beam started tilting over and I started to slip under and it fell across my leg.

The Court: It fell on your leg?

A. Yes.

Q. (By Mr. Sibbett): You started to slip as you and your partner were tilting the beam over to rest it on its side, is that correct?

A. Yes. As the beam started to come over I would slip underneath the beam at the same time.

Q. What caused you to slip, if you know?

A. Well, it had grease around the deck, and by walking around my shoes were oily on the bottom. Putting pressure to turn those beams over, well, that grease made it slide, lose your balance and slide underneath the beam. [15]

Q. How did you fall?

A. I fell on my back. As we were turning the beam over I fell smack on my back. My leg went under the beam as the beam was coming over.

Q. Did the beam fall on you?

A. Yes, pinned me to the deck.

(Testimony of Benjamin Harrison, Jr.)

Q. What part of your body did the beam fall on?

A. On my leg, and across my knee.

Q. Which leg? A. Left leg.

Q. What did you do after that?

A. Well, the men rushed—I hollered and the men rushed to pick the beam off my leg, and then sent for a basket because I couldn't get up, and carried me out.

Q. How did they send in the basket?

A. By the winch driver.

Q. Just like you would bring in cargo?

A. That is right.

Q. How did you get into the basket?

A. Well, my fellow brothers that I work with put me in the basket.

Q. And then the winch driver——

A. Hoisted me out on the dock.

Q. Swung you over and put you down on the dock, is that correct? [16] A. Yes.

Q. At this particular time were you in any pain?

A. Yes, my leg were hurting me terrible because there was a big hole bruised in it, and the weight of that beam had located on my knee and the sharp edge of the beam was resting on the femur of my leg.

Q. What do you mean by the femur of your leg?

A. That is the thigh bone. Because the knee bone were under the beam, holding the weight, and further back the sharp edge of that beam were way back further above my knee.

Q. By "femur," you referred to your thigh bone,

(Testimony of Benjamin Harrison, Jr.)

is that right? A. That is right.

Q. Was there any bleeding or any cut around your knee?

A. Just bruised in front of my knee.

Q. What about the under part of your knee?

A. Blew a hole in the back of my knee.

Q. That, of course, hadn't been struck by the strongback?

The Court: What do you mean by a hole in the back of your leg?

A. Compression of the beam, by being heavy and fell on my knee, bruised the back of my knee.

The Court: The skin was broken?

A. Big hole in it.

Q. (By Mr. Sibbett): In other words—well, strike that. How long did you remain in the basket on the dock before [17] the ambulance came?

A. The ambulance at Benicia come and got me.

Q. How long a time was it, do you remember?

A. Well, I would estimate about 10 or 15 minutes.

Q. And where were you taken first by the ambulance?

A. At Benicia first aid, I imagine, they call it.

Q. Some place in Benicia, is that correct?

A. Yes, some place in Benicia.

Q. What, if anything, did they do for you there?

A. The doctor looked at my leg there, wrapped my leg up in bandages and said I required surgery, and he gave me a paper to the Stevedoring Company.

(Testimony of Benjamin Harrison, Jr.)

Q. Well, we are not concerned about that. We just want to know what the doctor did for your leg.

A. He looked at my leg and gave me first aid.

Q. Tell us what you mean by first aid.

A. Asked me were I in pain and I told him, "Yes." He wrapped my leg up with bandages, said he didn't have no place for no surgery there, I would have to go to the doctor where they do surgery.

Q. Was the side of your knee bleeding at that time? A. Well, no, it wasn't bleeding.

Q. I am talking about the under side, not the upper side.

A. Well, no, nothing to amount to nothing.

Q. Then where did they take you? [18]

A. They taken me to the Alameda—to Dr. Jones' office.

Q. They first took you to a doctor's office, is that right, not to the hospital? A. Yes.

Q. What did Dr. Jones do for you?

A. Well, he said——

Q. (Interposing): Not what he said, Mr. Harrison, but just what he did.

A. He taken me over to the Alameda Hospital.

Q. He didn't do anything right there?

A. No, he didn't do any surgery there. Taken me to the Alameda Hospital.

Q. How long were you in the Alameda Hospital?

A. About half an hour in the X-ray room. Into the X-ray room first.

Q. Yes. What next?

(Testimony of Benjamin Harrison, Jr.)

A. Then carried me to the ward, said the doctor was out at the present time, they would have to have surgery.

Q. When did they have the surgery, as you recall it?

A. Oh, about an hour or two when I was there in the room they brought me into surgery.

Q. Do you know what they did to you?

A. Yes, they cut out some of the bad flesh in my leg.

Q. Where was that?

A. That was in the hospital. [19]

Q. I mean, what part of your knee?

A. Oh, the under side.

Q. You say they cut off some of the loose flesh?

A. Yes, the bruised flesh, and sewed my leg up.

Q. Were you under some sort of anesthesia when that was done?

A. Well, yes, they put anesthetic in the leg at the same time before they sewed it up.

Q. So you didn't feel anything on that?

A. Once in a while I would feel when the needle would strike where it wasn't dead and he would put some more anesthetic down there.

Q. They bandaged up your leg and put you to bed?

A. Yes.

Q. When were you released from the hospital?

A. Next morning Dr. Jones tell me I could go home.

Q. How did you get home?

(Testimony of Benjamin Harrison, Jr.)

A. A neighbor of mine come and got me, and I had crutches to assist myself on.

Q. When you got home did you go to bed or did you stay up with your crutches?

A. I stayed up in a chair around the house.

Q. Well, during the first three or four days was that knee paining?

A. Yes, it was in pain for quite a few days. About four or five days. And then I would have to go back to the doctor's [20] office every two days to have that leg treated.

Q. Were you having any difficulty in sleeping that first week or so?

A. Yes, I couldn't sleep and I mentioned to the doctor about it and he said, well, I will have to get some pills to ease the pain.

Q. When did he first give you these pills?

A. He didn't give them to me until about three or four days after I mentioned what great pain I had day and night times, how the leg was thumping and hurting, so he had to give me some pills and resting tablets to ease the pain.

Q. Did those pills help you?

A. Yes, they did.

Q. How long did you use the pain pills?

A. About a week.

Q. Do you remember about when it was you were able to return to work?

A. Around November.

Q. I might say, Mr. Harrison, we have the pay-

(Testimony of Benjamin Harrison, Jr.)

roll records here which indicate you went back to work November 20th. Would that be about it?

A. Yes. Between five and six weeks.

Mr. Sibbett: I think, Judge, we can stipulate to that date as the date of return to work.

Q. How long during that period that you were off work did you [21] have to use the crutches?

A. About three weeks.

Q. And then after you discontinued the crutches were you able to get around without using a cane?

A. Well, I would limp to my car, make it to my car and go to the doctor for treatment; try to put as much weight as possible, because the doctor told me to put as much weight as possible and use my leg, so I tried to eliminate the crutches as much as possible.

Q. You tried to use the leg as much as you could as the doctor said, is that right?

A. Yes.

Q. How often did you go to the doctor's office in Alameda while you were off work?

A. Twice a week.

Q. What treatment, if any, did you receive when you went to the doctor's office?

A. That leg hadn't completely healed. It had a hole in there yet. Put healing power on that leg and dress it.

Q. He would dress it?

A. Yes, until that hole filled in.

Q. Did you get any heat treatments during this period of time?

(Testimony of Benjamin Harrison, Jr.)

A. Not until after my leg healed.

Q. Until after you returned to work, is that [22] right? A. Yes.

Q. After you returned to work November 20th of last year, did you still continue going to the doctor for treatment? A. Yes, I did.

Q. Did you continue going about twice a week or did you step it down to once a week?

A. I was going there twice for a while and then——

Q. (Interposing): Until how long?

A. I would say maybe about two or three weeks.

Q. After you returned to work? A. Yes.

Q. Then he stepped it down to once a week?

A. Yes.

Q. What was done for you on those once a week visits?

A. They was giving me heat treatments.

Q. To your left knee? A. Yes.

Q. How long a period was it you went to the doctor once a week?

A. About, well, I imagine about three months.

Q. That would bring you into the latter part of January or early February?

A. Around about March, I imagine. March or April.

Q. When is the last time you went to the doctor and received a treatment—the approximate [23] month?

A. I think March. I wouldn't know exactly.

Q. During that time you were receiving heat

(Testimony of Benjamin Harrison, Jr.)

treatments, is that correct? A. Yes.

Q. Now, after you returned to work did your knee and left leg continue to bother you or not?

A. Yes, it stays stiff in the joint.

Q. I will ask you in a minute if there is anything wrong with it now, but the first three or four months you were working and going to the doctor?

A. What was the question?

Q. After you returned to work on November 20th did your knee bother you, and, if so, how did your knee bother you? That is right after you returned to work.

A. If I sat down a long time it would get stiff in the joint. I would get up, I would have to walk a block or two before it seems like it gets back to normal.

Q. When you first returned to work, did you have any pain in the area of your knee—when you first returned to work? A. Well, not bad.

Q. As I understand it, you were able to do your work, is that correct? A. Yes, I were.

Q. Since that time you haven't had to take any time off from work because of your knee, is that right? [24] A. No, I haven't.

Mr. Sibbett: Now, I might say, Judge, that we have a wage statement from the Pacific Maritime Association, and counsel have stipulated that if the records were subpoenaed the records would show as indicated on this recap.

I will offer the recapitulation into evidence. Counsel have already seen it and examined it.

(Testimony of Benjamin Harrison, Jr.)

The Court: Libelant's Exhibit 2.

(Whereupon, recap referred to above was received in evidence and marked Libelant's Exhibit No. 2.)

Mr. Sibbett: That record shows, Judge, that for the 24-week period immediately preceding the accident Mr. Harrison's average weekly earnings were \$111.50. His average weekly earnings.

Q. (By Mr. Sibbett): Now, Mr. Harrison, does your knee bother you at all at the present time, and, if so, how?

A. It gets a little stiff at times from sitting around and I have to walk around and open it back up before it seems normal.

Q. As I understand it, you have no difficulty whatsoever in extending the knee out?

A. No, none at all.

Q. That is perfectly normal?

A. That is right. [25]

Q. Do you have any difficulty when you attempt to make a squat? What happens then?

A. Yes, it hurts right at the knee joint.

Q. Had you ever received any injury before this time to that leg any place? A. No, never.

Mr. Sibbett: That is all.

Cross-Examination

By Mr. Thornton:

Q. Mr. Harrison, for whom were you working on October 14th, 1954?

A. Jones Stevedoring Company.

(Testimony of Benjamin Harrison, Jr.)

Q. Who was your immediate superior, your immediate boss? A. Mr. C. Jensen, Gang 189.

Q. For whom was he working?

A. Jones Stevedoring Company.

Q. Now, as I understand your testimony, Mr. Harrison, when you went aboard the ship that morning the hatch to the front 'tween deck was already open, is that correct? A. Yes.

Q. Do you know who opened that hatch?

A. No, I didn't.

Q. Was there anybody working the hatch when you went aboard? A. No, there were not.

Q. When you went below and noticed this oil on the deck, did it appear to you to be old oil or new oil? [26]

A. Old oil. In other words, burned oil. Seemed like burned oil out of a car.

The Court: Seemed like what?

A. Old oil.

Q. (By Mr. Thornton): What caused you to reach that conclusion, Mr. Harrison?

A. Because it was so dark.

Q. Was this oil in spots around the deck?

A. It was over mostly all the deck.

Q. Did you call the attention of your boss to the presence of this oil? A. I did.

Q. How did you do that, Mr. Harrison?

A. I said I went into the gaffer—that's the boss, Mr. Jensen. If we don't see a gaffer we call a winch driver.

Q. Did you see a gaffer on this occasion?

(Testimony of Benjamin Harrison, Jr.)

A. Yes, I did.

Q. Where was the gaffer?

A. He was on deck.

Q. Looking down the hatch?

A. No, he came. When I asked for him he came over and looked down.

Q. What did you say?

A. "Get us some sawdust. There's a whole lot of oil on this deck down here." [27]

Q. Is the gaffer Jensen? A. Yes.

Q. Did he get your sawdust?

A. He said, "I will see what there is," and he went off and come back and replied they didn't have any.

Q. How long was it before Jensen came back?

A. Oh, I would say maybe about five minutes.

Q. What were you doing during that period of time?

A. We was still down there cutting wires loose off the jeeps.

Q. How many of you were down below?

A. Six.

Q. And what happened when Jensen told you there was no sawdust?

A. Told him to get us some sand, something.

Q. Did Jensen go away then? A. Yes.

Q. How long was it before he came back that time? A. Oh, about five minutes.

Q. What did he say that time?

A. Walked up, said, "Didn't have any sand, either. Just take it easy, the walker said."

(Testimony of Benjamin Harrison, Jr.)

Q. Is that the time he told you to take it easy and, "Do the best we can"?

A. After they didn't have any sawdust or sand.

Q. What did that mean to you? [28]

A. In other words, not rush ourselves. Be careful. Take out time. In other words, when a fellow says, "Take it easy."

Q. Did you take it easy?

A. Try to be as careful as possible.

Q. Did you remove some of the jeeps from the shelter deck then?

A. We did continue with the operation and set them all out on the shelter deck.

Q. And cleared the shelter deck?

A. That is right.

Q. And started to open the hatch to the lower 'tween deck?

A. That is right.

Q. Was the gaffer present when the hatch was being opened?

A. Yes, he was on deck.

Q. He was supervising the job?

A. Yes. He is on that particular hatch.

Q. And these hatch beams that you referred to, were they on a bridle and taken out of the slots by the winch?

A. That is right.

Q. And they were landed in——

A. (Interposing): In the wing of the ship.

Q. That is beyond the coaming?

A. That is abreast.

Q. When these hatch beams were landed, were they landed on their edge? [29]

A. Yes. They have a flat bottom and we always

(Testimony of Benjamin Harrison, Jr.)

land them on the edge if they are going to take it back down——

Q. (Interposing): About how tall were these hatch beams when standing up?

A. I would estimate two and one-half or three feet.

Q. And do you know what one weighs?

A. I wouldn't know exactly. I just estimate about 1,500. That is a rough estimate.

Q. That is a half a ton or more?

A. Be a half a ton. Two thousand would be a ton.

Q. It would be less than a ton?

A. To my estimate. I don't know exactly. Maybe heavier.

Q. Will you tell us how you turned that hatch beam over?

A. We landed the beam with the assistance of the winch driver on edge like it is standing—on the flat bottom.

The Court: By "on edge" what do you mean?

A. On that flat bottom. That particular beam will stand.

The Court: Well, looking at this picture here, do you mean this part would be flat down on the ground—on deck?

A. No, I mean this part here (indicating). It is a flat bottom and here that beam will stand right there (indicating).

The Court: Here?

A. No, this one. This one here. There is a block and a rope tied around that one. That is

(Testimony of Benjamin Harrison, Jr.)

the same beam, you understand. That will stand, too. [30]

The Court: I don't understand it, Mr. Harrison. Is this what you mean by the bottom (indicating on photograph)?

A. Yes, but that beam is on an angle. It is shaped like a "V." Right in the middle here it is flat. That beam will stand up just like this picture is standing (demonstrating).

The Court: It stands on this part and not that part?

A. Not that part. That is the top of the beam.

The Court: I see.

Mr. Sibbett: That is the way the winch driver has to take it out of the hatch.

The Court: The curve part of the beam is on the bottom as you take it out?

The Witness: That is right.

Q. (By Mr. Thornton): In other words, Mr. Harrison, this beam was standing just about the way it would be if it were in the slot across the hatch? A. Exactly.

Q. What did you do from then on?

A. We had the hatch, turned it back down. After we unhooked the bridle, we had landed a beam, unhooked the bridle—hooked the bridle and let the winch driver pick it up. My partner and I attempted to turn the beam.

The Court: On its side?

A. On its side. This would be the beam here

(Testimony of Benjamin Harrison, Jr.)

coming over. I slipped right on the edge of this beam and the beam fell on [31] my leg.

Q. (By Mr. Thornton): Why did you want to turn the beam over?

A. Safety. The vibration of the ship, if that beam was standing straight up, the vibration, that beam it would turn over and go back in the hold.

Q. Isn't it customary, Mr. Harrison, to have the winch turn those beams over and you guard it?

A. The winch on those particular hatches can't turn those beams over.

Q. Is there anything in this particular hatch that made that impossible?

A. Yes, it was pretty close to the coaming where it landed.

Q. It could have been done, though, couldn't it?

A. Maybe.

Q. Where were you standing when you tried to turn the hatch beam over?

A. At the end of the beam.

Q. And your partner at the other end, is that right?

A. That is right.

Q. I believe you testified in answer to Mr. Sibbett's questions you believed you had oil on your shoe. What led you to that belief, Mr. Harrison?

A. Because oil was all around most of the deck.

Q. Well, did you see any oil on your shoe? [32]

A. Well, it's impossible to walk around an oily floor and not get oil on your shoes when oil is mostly over the floor.

Q. Now, you were taking it easy, is that right,

(Testimony of Benjamin Harrison, Jr.)

when you were unloading this hold because you had been warned by Mr. Jensen?

A. I wouldn't say exactly taking it easy because I wanted to do the job, do my part of the work, go on to do a man's job.

Q. Well, were you conscious of the presence of oil down there? A. I were.

Q. Were you being careful? A. I were.

Q. Now, before you took hold of this hatch beam to turn it over, did you look on the deck around the place where you were standing to see if there was any oil there? A. I did.

Q. And was there any oil there?

A. Not where I was standing.

The Court: What had happened to the three strongbacks before that? What had you done before that?

A. Well, we landed that on the offshore side of the ship.

The Court: On the offshore side?

A. Yes, offshore.

The Court: How had they been landed?

A. Same identical way, but we were more of us on the other [33] side.

The Court: Did you turn them over, too?

A. We did.

The Court: On their side?

A. Yes.

Q. (By Mr. Thornton): Was the gaffer watching you when you turned these beams over?

A. No, he was on deck.

(Testimony of Benjamin Harrison, Jr.)

Q. Had you ever been told not to turn these hatch beams over by end? A. No, sir.

Q. Had you done it before?

A. Yes, I have.

Q. Now, during the time you were working down in the hold, from the time you first went in until you slipped, did you see any of the ship's officers or crew around?

A. Yes, I saw one of the mates look down in the hold.

Q. Did you say anything to the mate?

A. No. It's not my business to say anything to him.

Q. Did you hear him say anything?

A. No, I just saw him looking down.

Q. Now, when you were removing the jeeps from the upper 'tween deck, the shelter deck, did any oil drip out? A. Yes.

Q. What were the lighting conditions in the hold? How much [34] light did you have?

A. Well, there was plenty of light.

Q. So then, Mr. Harrison, it's your testimony that you think you had oil on your shoe and that caused you to slip, is that right? A. Exactly.

Q. Did you pay any of your doctor's bills?

A. No, I didn't.

Q. Do you know who paid them?

A. No, I don't know. I imagine the Stevedoring Company that I work for.

Mr. Thornton: I have no further questions.

(Testimony of Benjamin Harrison, Jr.)

Cross-Examination

By Mr. Schaldach:

Q. Mr. Harrison, you were off work from the date of the injury, which was the 14th of October, 1954. You went back to work on the 19th of November, isn't that correct?

A. Maybe so. I don't know exactly.

Q. And you were paid compensation for four weeks and one day, isn't that correct, sir?

A. Yes.

Q. A total amount of about \$145?

A. \$35 a week.

Q. \$145 total?

Mr. Schaldach: Counsel, is that correct? I have given [35] you these figures.

Mr. Sibbett: Yes. I think you should point out to the Court that no compensation was paid for the first week.

Mr. Schaldach: That's correct. No compensation was paid for the first week. Mr. Harrison received comp. for four weeks and one day, and therefore off for five weeks and one day; received medical benefits, doctors' and hospital, in the total amount of \$162.85.

The Court: How much?

Mr. Schaldach: \$162.85.

The Court: That is doctor and hospital?

Mr. Schaldach: Yes, your Honor.

Mr. Sibbett: Before you go on, Mr. Schaldach, may we also stipulate that if Mr. Harrison received

(Testimony of Benjamin Harrison, Jr.)

an award in this case there will be deducted from that award the sum of \$307.85 to be paid back to the carrier for the Stevedoring Company?

Mr. Schaldach: That's the total amount of the comp.

The Court: That is one hundred forty-five plus the one hundred sixty-two?

Mr. Schaldrach: That is correct.

Mr. Sibbett: That has to be paid out if there is an award.

The Court: Very well. What is that total? Is it one hundred forty-five, even? [36]

Mr. Schaldach: Yes, your Honor, one hundred forty-five, even.

Q. Mr. Harrison, since returning to work after this accident on the 19th of November, you have earned just as much, haven't you, as you earned prior to the injury, on the average?

A. I figure about the average, yes.

Q. About the same? In other words, it shows here from the records—. Have you examined this, by the way, Mr. Harrison? Pacific Maritime Association letter showing the earnings which you have made prior to your injury and after your injury.

A. Yes.

Q. And does that correctly reflect the earnings that you have made?

A. Oh, yes, I am pretty sure that is right.

Q. You haven't lost any time, have you?

A. No, I wouldn't say, because the day that I take off for something to go to the doctor, I had

(Testimony of Benjamin Harrison, Jr.)

that leg ache at the time, but I wouldn't say exactly lost time.

Q. When was the last time—. By the way, you were treated by Dr. Lum, weren't you—Dr. Donald Lum over in—

A. Alameda.

Q. 2225 Central Avenue, Alameda?

A. That's right.

Q. And this laceration that you talked about, or this hole that you talked about, as a matter of fact it was a cut in the [37] back of your left knee, wasn't it, right where your knee bends?

A. That's right.

Q. Probably about two and one-half to three inches long, isn't that right?

A. That's right.

Q. And when you say you went in to surgery, what you mean is that the doctor put you in the hospital in Alameda and sewed that up, sutured it, isn't that right?

A. Sewed it up, that's right.

Q. That is all he did for you. And you went back and saw him on several occasions for treatment, right?

A. Yes, I went back for treatment.

Q. In other words, what did he do? Give you hot baths?

A. No, he just—well, I come out of the hospital, it taken a while before that hole completely filled in, because there was a hole in that leg after he taken the stitches out, and he put powder in there to fill that in—healing powder.

Mr. Schaldach: Your Honor, I am advised by Mr. Sibbett that he will not have a doctor here and the doctor whose report he intends to introduce was

(Testimony of Benjamin Harrison, Jr.)

not the attending physician. I have the first report of injury, and counsel for all parties have stipulated that it may be received in evidence.

The Court: All right, Impleaded Respondent's Exhibit A.

(Whereupon first report of injury referred to above was received in evidence and marked Impleaded [38] Respondent's Exhibit A.)

Q. (By Mr. Schaldach): Now, Mr. Harrison, you say that when you went to work that particular morning at Benicia you went down into the shelter deck? A. That is right.

Q. Where the jeeps were in the wing, is that correct? A. That's right.

Q. Now, did you notice this oil that was on the shelter deck on the hatch boards?

A. Wasn't much on the hatch boards.

Q. Where was the oil located?

A. Right on the steel deck, in the square.

Q. In the wings? A. Yes, all around.

Q. The wings are that portion of the deck, on the shelter deck, which are outside of the square of the hatch, is that correct?

A. That is right. All around the square.

The Court: But are underneath the main deck?

A. Yes.

Mr. Schaldach: Yes, your Honor. Each deck has a name to it. Some of them have different names, but usually they call it the upper 'tween, lower 'tween, and this they call the shelter deck.

Q. Is that commonly known as the upper 'tween

(Testimony of Benjamin Harrison, Jr.)

deck—the [39] shelter deck? A. Yes.

Q. All right. And the square of the hatch goes all the way down, and on the sides and fore and aft, they designate those as the wings, I presume. Is that correct, sir?

A. Well, you say fore and aft. Right or left, you have a wing on each wide, right or left.

Q. That is the area which is not included in the square of the hatch? It's outside of the square of the hatch, is it not?

A. In other words, that is what is called the wing.

Q. Now, is that where the jeeps were located, sir, in the wings?

A. The jeeps were all around.

Q. They were all around?

A. That's right.

Q. Where did you notice the oil, though, that is what I want to know?

A. Around—in fact, all around the ship. In other words, all around the square.

Q. Was it globs of oil, Mr. Harrison, or was it—did it look like a film of oil, or can you give us a better idea of what it looked like?

A. Well, in some places on the ship the deck runs a little lower than others. Well, the oil at the front, on the front of that square, well, as it goes back and there is a lot of oil [40] there, most of it will be sort of deeper farther back because it has a lift back that way on the deck, and there will be more on the back than there will be in the front.

(Testimony of Benjamin Harrison, Jr.)

Q. Well, was the oil runny in nature or was it solid?

A. Well, the oil was just like you would get there on the floor. Same thing.

Q. You saw it on the deck? A. Oh, yes.

Q. For example, these squares here, these dark squares of linoleum here, would the spots of oil be as large as those?

A. Well, the oil is solid, not just mostly in spots. It's solid, mostly all over the wings.

Q. In other words, am I correct in saying that there was rather a film or sheet of oil across the whole deck?

A. Yes. Very few dry spots you would find.

Q. Very few dry spots?

A. That's right. As far as the wings, yes.

Q. Was this dry oil or was it runny oil?

A. Well, no, it's wet oil.

Q. Wet oil? Runny oil? A. Yes.

Q. Then is that when you asked Mr. Jensen to get some sawdust?

A. No, when I first come down, before we uncovered the hatch.

Q. You saw the condition, is that right? [41]

A. Yes.

Q. In other words, you had a talk with, and I presume the men you were working with, had a talk with the gang boss?

A. Oh, yes, right away.

Q. You wouldn't work, would you, until you got that oil cleaned up there?

(Testimony of Benjamin Harrison, Jr.)

A. Not if it was possible.

Q. Did you have a talk among yourselves about not working after Mr. Jensen came back and said he couldn't find any sawdust or sand?

A. Well, after the walker said, "Well, take it easy," well, we decided to try and continue with the operation, continue working.

Q. Did you have any dunnage down there, by the way, Mr. Harrison? A. No, no dunnage.

Q. No dunnage? You couldn't lay any wood over this?

A. No, there wasn't any wood on the deck.

Q. How long have you been a longshoreman?

A. Since January 27, 1944.

Q. About eleven years. A. That is right.

Q. You have worked on a lot of vessels, have you? A. Oh, yes.

Q. Taking out machinery? [42] A. Yes.

Q. Automobiles?

A. Oh, yes. Loaded them and unloaded them. Used to work on a heavy lift gang all during the war time. All heavy equipment handled during the war.

Q. By the way, Jones Stevedoring doesn't have a terminal building up there at Benicia, does it? I mean there is no building up there in which Jones has its gear stored? You bring your gear with you, do you not? A. You bring the gear.

Q. That is, the Stevedoring Company brings the gear?

A. I imagine. I don't know exactly.

(Testimony of Benjamin Harrison, Jr.)

Q. Whereabouts in Benicia, Mr. Harrison, was this vessel docked?

A. The regular dock in there.

Q. Did you have to go through some reservation up there to get to the dock?

A. Oh, yes, you can't get to Benicia there without a guard checking you to see if you got your right identification.

Q. In other words, you have to go through a gate, is that correct? A. Yes.

Q. And they check you, and so forth?

A. That's right.

Q. Do you know what the custom is and practice, Mr. Harrison, [43] in the Port of San Francisco during your eleven years of doing longshore work with respect to the vessel providing sawdust or sand?

A. Well, I didn't know who supplied it.

Q. Well, let me ask you this: Have you been on vessels before where you have done work where oil and grease has been around the deck?

A. Yes.

Q. And asked the vessel's personnel or the vessel's mate or someone to buy sand or sawdust and the same was provided for by the vessel?

A. Well, we always ask the gaffer, and where it comes from we don't know, whether the ship supplies them or whether the walking boss supplies them.

Q. You mean Mr. Jensen——

A. (Interposing): That's right.

(Testimony of Benjamin Harrison, Jr.)

Q. You wouldn't know that?

A. That's right. He takes his orders from the walking boss, we take our orders from him.

Q. By the way, this strongback that fell over on you, when it landed it was about like this (indicating), on edge?

A. That is right.

Q. And then you got on one end and your co-worker got on the other end and you were attempting to lay it down on its side?

A. That's right. [44]

Q. And at that time as it was being laid down on its side you slipped and your left leg fell underneath it and it fell on you?

A. That is right.

Q. In other words, it didn't drop on you?

A. No.

Q. Just tilted?

A. That is right.

Mr. Schaldach: No further questions.

Redirect Examination

By Mr. Sibbett:

Q. Mr. Harrison, on this particular morning and before you were hurt, had you had any difficulty with your footing at all?

A. No.

Q. Had you slipped at any time, although you hadn't hurt yourself?

A. Well, no, I hadn't hurt myself.

Q. Had you slipped a little bit?

A. Well, it was pretty slippery on deck, around the deck. That is what made us notice right away,

(Testimony of Benjamin Harrison, Jr.)

the minute we came down, that the coaming was pretty slippery. Taking those strongbacks out or anything, walking around, even when we went to cut the wires and all, to cut the jeeps loose, that is why we applied for sawdust or something right away.

Q. During that hour or so that you did work there before you [45] were hurt, had either one of your feet started to slip before that time?

A. Well, no, I wouldn't say they started to slip.

Q. Well, how was the footing?

A. By the deck having oil on it, when you walked, well, you may slide a little on the grease, but not enough to amount to nothing, probably because it would be just enough to notice right away that you should have something on the deck because it was unsafe. Anyone was apt to get hurt.

Q. Now, as you and your partner were tilting the beam over to lay it down on its side, what would have happened if you had let go to change your position in any respect?

A. I was standing at the edge of the beam, and I thought I had a pretty good holt to avoid slipping or anything, and I didn't think I would slip under the beam or anything because I was standing clear of the beam.

Q. Did you slip?

A. And when the beam started, well, I started slipping with the beam. As the beam started over, I started sliding under that beam, and the beam

(Testimony of Benjamin Harrison, Jr.)

started scratching my kneecap, a little above my kneecap, all the way down until I hit the deck.

Q. What caused you to slide?

A. Well, grease on the bottom of my shoes.

Mr. Sibbett: That is all. [46]

Recross-Examination

By Mr. Thornton:

Q. What kind of shoes were you wearing, Mr. Harrison? A. Well, regular work shoes.

Q. High, muleskin shoes?

A. Regular work shoes with rubber heels and bottom.

Q. In response to one of Mr. Sibbett's questions just now you said they should have had something on the deck because it was unsafe. Do you remember saying that? A. That is right.

Q. You knew it was unsafe, didn't you?

A. Yes, we all knew it was unsafe.

Q. And you continued to work?

A. Well, after the walking boss said to try to take it easy and they didn't apply sawdust or anything, they didn't have any, we didn't want to hold the ship up.

Mr. Thornton: That is all.

(Testimony of Benjamin Harrison, Jr.)

Redirect Examination

By Mr. Sibbett:

Q. Mr. Harrison, on that subject, did the fact that you were handling military cargo and were on a ship that was in command of military officers have anything to do with your decision to try to do your job?

A. That's right. That is why we didn't want to hold the ship up.

The Court: All right, that is all. You may step down. [47]

(Witness excused.)

Mr. Sibbett: Does your Honor wish to continue?

The Court: Yes.

Mr. Sibbett: Mr. Jensen.

CHRISTIAN JENSEN

called as a witness on behalf of the libelant; sworn.

The Court: State your full name, please.

A. Christian Jensen.

The Court: Sit back and speak out.

A. Christian Jensen.

Direct Examination

By Mr. Sibbett:

Q. What is your present occupation, Mr. Jensen?

A. I am a longshore foreman.

Q. Longshore foreman? And you are sometimes called a gaffer and sometimes a gang boss, is that

(Testimony of Christian Jensen.)

correct? A. That's right, sir.

Q. And how long have you worked as a longshoreman?

A. Well, in San Francisco I been working off and on since 1922.

Q. Since 1922? A. That's right, sir.

Q. And how long have you worked steadily as a longshoreman? A. Since 1934. [48]

Q. How long have you been a gang foreman?

A. Well, from 1945. In 1945 I was walking foreman for about three or four years, and then I laid off and went in again. I didn't want to be foreman.

Q. You didn't want to be foreman for a while?

A. No. So I was hurt in 1950 and I have been foreman since.

Q. I see. Because of that injury you weren't able to do regular longshoreman's work and you went back to being a boss, is that right?

A. That's right.

Q. Now, you have heard Mr. Harrison testify here this morning, have you not? A. Yes.

Q. And Mr. Harrison, as I understand it, was a member of your gang on that particular morning up at Benicia, is that right?

A. That's right, sir.

Q. Now, as I understand it, you don't have what is known as a regular gang? In other words, the men you boss come off the plug? They are different men? A. Yes.

(Testimony of Christian Jensen.)

Q. So did you know Mr. Harrison personally before this time?

A. Oh, I seen him off and on, but I didn't know him.

Q. Just occasionally, once in a while you would catch him as a member of your gang, is that right?

A. That's right. [49]

Q. Now, what time did you board the vessel, you and your gang, to go to work that morning?

A. Eight o'clock in the morning.

Q. And Mr. Harrison's recollection is that you went to the No. 1 hatch, is that right?

A. Well, it was a Navy ship and some of those has two hatches. One is a blind hatch so I am not sure, but we had No. 1 gear.

Q. You had No. 1 gear?

A. Yes. Now, I am not positive, I am not sure as to No. 1 or No. 2 hatch, but we had No. 1 gear.

Q. In other words, you were using the No. 1 mast and booms for discharging cargo?

A. That's right.

Q. When you went aboard was the hatch open or closed at the main deck level?

A. The hatch was open. The sailors must have took it off and had the gear ready for us to start in the morning.

Q. Is this the first time you had worked aboard that vessel?

A. Yes. We only worked one day there.

Q. I see. And that was this particular day?

A. That's right.

(Testimony of Christian Jensen.)

Q. So that when you went aboard the vessel the men were able to go directly down to the shelter deck without taking any hatch covers or booms off the main deck? [50] A. That's right.

Q. And when the men went down, did you have occasion to go down below?

A. I always, yes, as foreman I always make myself duty to go down and inspect the gears first. Most of the time I go down and look it over, and I went down and I saw all that——

Q. (Interposing): Just a minute, Mr. Jensen. We will just take this slowly and one thing at a time.

On this particular morning did you go down to the shelter deck and look around?

A. Yes, that's right.

Q. And did you see anything unusual about the conditions there on this morning? A. Sure.

Q. What did you see?

A. Well, I saw the whole 'tween deck right from the edge of the hatch coaming, from the forward end to the after bulkhead was full of oil. And the after end, of course, you have a little sheer, and the after end was up to half an inch of oil.

Q. Now, you say "a little sheer." You mean it slants down? A. Yes, that's right.

Q. How was it out around the hatch opening itself?

A. There was sign of oil all over, except at the top hatches. In the wooden hatches there was none because there was no jeeps there. [51]

(Testimony of Christian Jensen.)

Q. In other words, the hatch boards had no oil on them because there were no jeeps there?

A. No. That's right.

The Court: There were no what?

Mr. Sibbett: There were no jeeps there on the hatch boards.

Q. Now, what if anything did you do about this condition that you observed?

A. Well, first thing I come down, I went and saw the walking boss.

Q. Now, do you remember his name?

A. Well, yes, but I can't pronounce it. I give you the name. I——

Q. Did he have a nickname?

A. No. Eckstein, something like that.

Q. "Eckstein, something like that"?

A. Yes. I forget his name.

Q. Now, he is the man that you reported to——

A. That's right.

Q. ——if you had any requests to make, or complaints, or asking for instructions or anything like that?

A. That's right.

Q. Where did you see him?

A. I saw him up on the main deck.

Q. By the hatch or away from that? [52]

A. Well, he come up to the hatch and I was talking to him.

Q. Now, was there anybody else there when you talked to him?

A. Yes, there was the receiving officer, or who-

(Testimony of Christian Jensen.)

ever he was. I don't know. I wasn't introduced to him.

Q. Was he in uniform? A. That's right.

Q. And he was an officer, is that right?

A. That's right.

Q. You don't know his rank?

A. I don't know what rank he have?

Q. What if any conversation was had between the three of you, the walker, the officer and yourself?

A. I only had conversation with the walking boss.

Q. Was the officer there within hearing of this conversation? A. That's right.

Q. He was right there? A. That's right.

Q. What did you say to the walking boss in substance?

A. I asked if we couldn't get some sawdust, sand or any other substance there that you could cut the grease because we needed that or stop working.

Q. Either that or you would stop working?

A. That's right.

Q. And what did the walk say to you?

A. He said there was no such a thing available. So I went [53] down and talked to the men, after I asked for that substance to put on the grease, then I went down and talked to them.

Q. And what did you tell the men?

A. I asked them, "Do you want to work or do you want to lay off work, either to be careful or to go home? You have to do something because that is not safe."

(Testimony of Christian Jensen.)

Q. What did the men decide to do?

A. Well, decided they were going to stop.

Q. I didn't get that.

A. They decided they going to stop working.

Q. Oh, I see.

A. But then the commanding officer and the walking boss come out that the ship had to go somewhere else to load, and so on, in a hurry, and why we couldn't work carefully so the ship could get out that day and go down to another port to load the following day.

Q. Now, where did this conversation take place where the officer—Who was it that talked about the ship wanting to get unloaded and get to another port? A. That's the walking boss.

Q. Was the commanding officer with him at that time? A. He was standing next to him.

Q. I see. And did you tell the men—go down and tell the men what they said?

A. I went down and talked to them and asked them what their [54] decision would be.

Q. And what was the decision?

A. The decision was that, "We will continue."

Q. Continue to work? A. Yes.

Q. Now, as I understand it, Mr. Jensen, you didn't actually see and you weren't present and didn't see the accident Mr. Harrison had, did you?

A. No, but I have a good idea how it happened.

Q. Well, that's all right, but you didn't see it?

A. No, I didn't.

Q. When did you first know something had hap-

(Testimony of Christian Jensen.)

pened to Mr. Harrison? A. Right away.

Q. How did you know?

A. Because I was standing right up on the deck and everybody looking down in the hatch.

Q. I see. And did you immediately go down there to where Mr. Harison was lying?

A. No, I did not.

Q. What did you do?

A. I called for a stretcher and I hollered for an ambulance.

Q. I see. Then did you go down below?

A. That's right.

Q. As soon as you called for the stretcher and ambulance, [55] then did you go down below?

A. Yes, I went down and I helped put him in the stretcher.

Q. And when you went down below, where was Mr. Harrison lying with relation to the strongback?

A. Well, he was clear of the strongback at that time.

Q. The strongback had been taken off his leg?

A. That is right.

Q. Was he still lying on the deck? A. Yes.

Q. Did he appear to you to be in any pain? Was he making any complaints of pain?

A. Well, the poor devil, he was almost out.

Q. He was almost out, was he?

A. That's right.

Q. Now, what was the condition of the deck around where Mr. Harrison was lying?

A. Well, it was pretty slippery.

(Testimony of Christian Jensen.)

Q. Was there grease or oil there?

A. It was pretty greasy, yes.

Q. They took Mr. Harrison away. Did the men continue working under those conditions?

A. No, we stopped.

Q. You stopped work? A. That's right.

Q. And did they do something about that [56] grease?

A. Yes, about 15 or 20 minutes after, here come a truck up with all kinds of——

Q. (Interposing): Just a minute. I don't follow you. A. Pardon me.

Q. Here comes what?

A. Here comes a truck up——

Q. A truck up?

A. Yes. With sand. No, not sand. With sawdust and some chemical stuff to cut the oil.

Q. And did they take that sawdust aboard and that chemical and put it down on the deck?

A. That's right.

Q. Who did that work?

A. Well, I helped them out down there, and we all helped each other.

Q. Did any of the members of the crew help or just the longshoremen?

A. Just the longshoremen.

Q. Of course, by that time you had gone down to the deck below, is that right?

A. We had everything secured and safe we could before we went down below, and after that we went down below.

(Testimony of Christian Jensen.)

Q. Were there jeeps in the deck below?

A. Yes.

Q. Same kind of cargo as up on the shelter [57]
deck? A. Yes.

Mr. Sibbett: That is all.

Cross-Examination

By Mr. Thornton:

Q. Mr. Jensen, your walking boss was an employee of Jones Stevedoring Company, isn't he?

A. That is right, sir.

Q. Now, you said you saw a receiving officer talking to the walking boss, is that right?

A. Well, I don't know if he was receiving officer. He must have been because he were taking good care of the cargo, so he must have been the receiving officer.

Q. But you don't know what his rank was?

A. No, I did not.

Q. And you are assuming he was the receiving officer? A. That's right.

Q. He might have been an Army doctor?

A. No, he couldn't have been.

Q. Would you have known the difference?

A. Well, I guess I would.

Q. Now, you put it up to the men whether they wanted to continue to work or lay off, isn't that right? A. That is right, sir.

Q. And who made the decision to continue on with the work?

(Testimony of Christian Jensen.)

A. Well, I guess it is a—we were talking. We all figured because the ship was in such a hurry to be unloaded that we [58] decided we going to work.

Q. Now, when your walking boss was talking to this receiving officer, so-called, did you hear him ask this receiving officer for some sand or sawdust?

A. Yes, I did.

Q. Did you hear the walking boss ask him?

A. Well, yes, I did. During the discussion he said there was nothing available. They was talking, “What you going to do?” and that’s it.

Q. But you don’t know exactly who he was?

A. No, I did not.

Q. Now, you mentioned a commanding officer. How do you know he was the commanding officer?

A. Well, there was about five or six people down there altogether, but I don’t know who they was. He was in civilian clothes.

Q. I see. And now you said that about 10 or 15 minutes after Mr. Harrison was hurt a truck came up with some sawdust and chemicals?

A. That’s right, sir.

Q. Then it is true, isn’t it, Mr. Jensen, that there was sawdust available?

A. That’s right, there must have been.

Mr. Thornton: That is all. [59]

(Testimony of Christian Jensen.)

Cross-Examination

By Mr. Schaldach:

Q. Mr. Jensen, you say about 15 minutes after Mr. Harrison was hurt you saw a truck come up with sawdust? A. That's right.

Q. Where did you see that truck come from?

A. That come up from the yard, I believe. When you are on a ship you don't see very far. It has a hole coming out like this (indicating), behind the buildings. You can't see where the truck comes from.

Q. In other words, your view is obscured by some buildings there, is that right?

A. That's right, sir.

Q. In other words, if you were on the deck you can't see what happens behind this building?

A. That's right.

Q. But the truck did come from behind the building and come out in the open and that is when you saw it? A. That's right.

Q. What kind of a truck was it?

A. That was a pickup truck.

Q. What color was it painted?

A. I believe a blue.

Q. Do you know whose truck it was? Do you know who it belonged to? [60]

A. No. I guess it belonged to Jones Company. I am not sure, though.

Q. You don't know? A. No.

Q. Was it an Army truck?

(Testimony of Christian Jensen.)

A. No, not an Army truck. But I didn't see no name on it.

Q. There was no name on it?

A. I don't believe so. I didn't see no name.

Q. Do Jones Stevedoring trucks have the names on it?

A. Most stevedoring companies have their name painted on it.

Q. Well, Jones Stevedoring equipment is painted sort of an, oh, kind of a yellow, isn't it?

A. Yes.

Q. Or kind of an orange color?

A. Kind of a buff.

Q. Buff, yes. Was it that color—the truck?

A. No, it was blue.

Q. Blue? Did that truck bring the sawdust on to the vessel? A. Right down to the dock.

Q. No, my question was, did the sawdust eventually get on the vessel? A. Yes, sir.

Q. Who brought it aboard? A. We did.

Q. You did? Did you use that there in No. 2 hold or No. 1 [61] hold? A. Yes.

Q. After Mr. Harrison was hurt?

A. Yes, sir.

Q. Do you know how the sawdust happened to get to the vessel? A. From the truck, or what?

Q. I mean, you don't know——

A. (Interposing): I don't know anything about that.

Q. You didn't hear any conversation between

(Testimony of Christian Jensen.)

the walking boss and the Army man about the saw-dust coming?

A. No, I don't know who did that.

Q. You don't know anything about that?

A. That's right.

Mr. Schaldach: I see. That is all.

Redirect Examination

By Mr. Sibbett:

Q. Well, Mr. Jensen, Mr. Schaldach who just talked to you about this officer that was with the walking boss when you talked to the two men, what generally was this officer doing that morning around the ship?

A. I guess he was responsible for the cargo, that they were discharging without too much damage.

Q. What did he do to make you think that that was what his job was?

A. Because he was interrupting me and the gang quite a bit. [62] You see, one jeep will stand here at a 45 degree angle, and only the first tier of cars was standing on the level and all the others was standing up.

Q. What did this officer do?

A. Just a moment. If they stick together like this, we have to hook on with wires and heave them out, and naturally you are all facing together, and of course those old cars, they was all damaged as they was, and you stand there and holler, "Don't damage them any more than they are. Don't damage them, don't damage them."

(Testimony of Christian Jensen.)

Q. That was this officer?

A. Yes. And I said, "Either we leave them alone or you keep your mouth shut," I said, "because we don't want to be bothered." I said, "I am running this job and if we are not capable to do it," I said, "you may as well discharge us, get somebody else to do it."

Mr. Sibbett: Thank you.

Mr. Thornton: Mr. Jensen, is this the receiving officer you are talking about now? A. Yes, sir.

Mr. Thornton: That is all.

The Court: That is all. You may step down.

(Witness excused.)

Mr. Sibbett: Judge, the only other matter I have is our medical. We had Mr. Harrison examined on May 9th by Dr. [63] Gerald G. Gill. I believe counsel will stipulate Dr. Gill is qualified as an orthopedic specialist.

Mr. Thornton: Yes.

Mr. Sibbett: And to obviate unnecessary expense it has been stipulated that we may read Dr. Gill's report into evidence and opposing counsel may do likewise with their medical report.

I will ask that Dr. Gill's report be admitted into evidence as, I think, our third exhibit.

The Court: Libelant's Exhibit 3.

(Whereupon, medical report referred to above was received in evidence and marked Libelant's Exhibit No. 3.)

The Court: It is in evidence now. Let me read it.

Mr. Sibbett: Yes. Libelant rests, Judge.

Mr. Thornton: Your Honor, at this time, at the commencement of Respondent's case, I believe it would be appropriate to submit the report of our medical officer. I believe Mr. Sibbett will stipulate that if he were present he would testify as in this report.

Mr. Sibbett: Yes.

Mr. Thornton: May we offer it as Respondent's Exhibit 1?

(Whereupon, medical report referred to again was received in evidence and marked Respondent's Exhibit A.) [64]

Mr. Thornton: Respondent offers a copy of a contract between Jones Stevedoring Company and the United States Federal Government as of 1 January, 1954, and running until 31 December, 1954.

Mr. Sibbett: May the record show that in not objecting to the offer just made, the libelant, of course, contends that any contractual arrangement between the Government and the Stevedoring Company has nothing whatsoever to do with his claim against the United States.

The Court: It may be admitted and marked United States Exhibit B.

(Whereupon, contract referred to above was received in evidence and marked Respondent's Exhibit B.)

RESPONDENT'S EXHIBIT B

SF Coml.

1 January, 1954.

Contract for Stevedoring Services

Clause I

Stevedoring—General Scope of the Contract

a. General. The Contractor shall load and discharge cargoes and in connection therewith shall perform all the duties of a stevedore on any vessel which the Contracting Officer may designate at

Terminals in San Francisco Bay Area not under exclusive SFPE control (excluding Alameda Cold Storage Plant, Alameda)

upon the terms and conditions hereinafter set forth for the term of this contract, beginning 1 January, 1954, and ending 31 December, 1954; provided, however, that any work started before and not completed by the expiration of this contract shall be governed by the terms of this contract unless otherwise directed by the Contracting Officer.

b. Contractor's Duties (1) Loading. In loading vessel, the Contractor shall remove and handle cargo from place of rest on pier or in pier shed or within the cargo assembly area (as defined in Clause 1b (4)); also, from open-top railroad cars, trucks and trailers alongside ship; also from barges, lighters, scows, car floats and open-top railroad cars on car floats alongside ship. The Contractor shall stow said cargo in any space in the vessel, including bunker space, holds, 'tween decks, on deck and deep

(Respondent's Exhibit B—Continued.)

tanks, in the order directed by and in a manner satisfactory to the Contracting Officer and the master of the vessel or his representative.

(2) Discharging. In discharging vessel, the Contractor shall remove and handle cargo from any space in the vessel, including bunker space, holds, 'tween decks, on deck, and deep tanks. The Contractor shall land said cargo at place of rest on pier or in pier shed or within the cargo assembly area (as defined in Clause 1b (4)); also on open-top railroad cars, trucks and trailers alongside ship; also on barges, lighters, scows, car floats and open-top railroad cars on car floats alongside ship. The Contractor shall perform such discharging in the order directed by and in a manner satisfactory to the Contracting Officer.

* * *

c. Damage Reports. In all instances where cargo, vessel, vessel equipment or Government equipment sustains damage through handling by the Contractor's employees, a full report of the fact and the extent of such damage shall be submitted by the Contractor to the Contracting Officer within twenty-four (24) hours following the occurrence of such damage.

(1) Safety and Fire Regulations. The Contractor shall, in performing services under this contract, comply with safety and fire regulations promulgated by the San Francisco Port of Embarkation and shall observe all commercial marine safety practices. In all instances where Contractor's employees

(Respondent's Exhibit B—Continued.)

are injured, a full report of the fact and the extent of such injury shall be submitted by the Contractor to the Contracting Officer, or to the agency designated by him, within twenty-four (24) hours following the occurrence of such injury, and in the form prescribed by the Contracting Officer. If an Army investigation of the accident is conducted, the Contractor shall assist the investigator in securing statements from his employees and shall make pertinent records available to him.

d. Rigging and Unrigging. When the ship's gear is used for handling cargo, the Contractor, at his own expense, shall rig and unrig all gear, including the rigging and unrigging of heavy-lift gear when the heavy-lift booms are used, and shall hoist, lower and secure hatch tents when necessary; provided, however, that where any one set of gear is rigged for handling less than 100 payable tons of cargo on a commodity rate basis, the Contractor shall be compensated on an extra-labor basis for the rigging and unrigging of such set of gear. Rigging and unrigging shall include topping, lowering, and trimming of booms. When the Contractor is required to perform any rigging or unrigging services for the purpose of performing extra labor services, or performs any such services at the request of the Contracting Officer for any purpose other than loading or discharging cargo on a commodity rate basis, he shall be compensated therefor at extra labor rates. When the Contractor is required to break out booms

(Respondent's Exhibit B—Continued.)

from collars or boom rest, or to reeve guys on topping lifts through blocks, he shall be compensated therefor on an extra-labor basis.

(1) Where the Contractor has rigged or unrigged gear for the loading or discharging of cargo on a commodity rate basis, the fact that such gear is also used to perform extra-labor services, or other services at the request of the Contracting Officer, shall not entitle the Contractor to extra labor rates for the rigging, or unrigging.

e. Opening and Closing Vessel. The Contractor shall, at his own expense, remove and replace tarpaulins, battens, hatch covers and beams with respect to all decks and deep tanks both during loading and unloading operations and when necessary because of weather or working conditions, as directed by the Contracting Officer; provided, however, that the opening and closing on any one hatch shall be performed on an extra-labor basis where less than one hundred (100) payable tons are to be loaded and/or discharged at the commodity rate on any hatch so worked, and also where the Contractor is required to open and close the vessel for the purpose of performing extra-labor services. The removing, handling, replacing or setting of reefer plugs during the handling of cargo in any or all refrigerated or chilled space aboard the vessel is included in the basic commodity rate, except where the complete operation is on an extra-labor basis. When the

(Respondent's Exhibit B—Continued.)

Contractor is required to open or close reefer plugs more than once in any four-hour shift because of a change in orders or type of cargo, he shall be compensated therefor on the basis of 15 minutes detention time for men in gangs, including equipment drivers and gang foremen.

(1) Where the Contractor has opened or closed any hatch for the loading or discharging of cargo on a commodity rate basis the fact that such hatch is also used for the loading or discharging of cargo on an extra labor basis shall not entitle the Contractor to extra labor rates for the opening or closing of such hatch.

* * *

Clause 12. Liability and Insurance

a. The contractor

(1) shall be liable to the Government for any and all loss of or damage to cargo, vessels, piers or any other property of every kind and description, and

(2) shall be responsible for and shall hold the Government harmless from any and all loss, damage, liability and expense for cargo, vessels, piers or any other property of every kind and description, whether or not owned by the Government, or bodily injury to or death of persons occasioned either in whole or in part by the negligence or fault of the Contractor, his officers, agents or employees in the performance of work under this contract. The general liability and responsibility of the Contractor

(Respondent's Exhibit B—Continued.)

under this clause are subject only to the following specific limitations:

b. The Contractor shall not be responsible to the Government for and does not agree to hold the Government harmless from loss or damage to property or bodily injury to or death of persons:

(1) If the unseaworthiness of the vessel or failure or defect of the gear or equipment furnished by the Government contributed jointly with the fault or negligence of the Contractor in causing such damage, injury or death, and the Contractor, its officers, agents and employees, by the exercise of due diligence, could not have discovered such unseaworthiness or defect of gear or equipment, or through the exercise of due diligence could not otherwise have avoided such damage, injury or death.

(2) If the damage, injury or death resulted solely from an act or omission of the Government or its employees or resulted solely from proper compliance by officers, agents or employees of the Contractor with specific directions of the Contracting Officer.

c. The Contractor shall at its own expense procure and maintain during the term of this contract, insurance as follows:

(1) Standard Workmen's Compensation and Employer's Liability Insurance and Longshoremen's and Harbor Workers' Compensation Insurance, or such of these as may be proper under ap-

(Respondent's Exhibit B—Continued.)

plicable state or Federal statutes. The Contractor may, however, be self-insurer against the risk in this sub-paragraph (1), if it has obtained the prior approval of the Contracting Officer. This approval will be given upon receipt of satisfactory evidence that the Contractor has qualified as such self-insurer under applicable provisions of law.

(2) Bodily Injury Liability Insurance in an amount of not less than \$50,000 any one person and \$250,000 any one accident or occurrence.

(3) Property Damage Liability Insurance (which shall include any and all property, whether or not in the care, custody or control of the Contractor) in an amount of not less than \$250,000 on account of any one accident.

d. All policies of insurance required under the terms of this contract shall by appropriate endorsement, or otherwise, provide that no cancellation thereof shall be effected unless thirty (30) days' prior written notice thereof has been given to the Contracting Officer.

e. Satisfactory evidence of the required insurance endorsed as above shall be filed with the Contracting Officer prior to the performance of any work under this contract.

f. The Contractor shall, at its own cost and expense, defend any suits, demands, claims or actions, in which the United States might be named as co-defendant of the Contractor, arising out of or as a

(Respondent's Exhibit B—Continued.)

result of the Contractor's performance of work under this contract, whether or not such suit, demand, claim or action arose out of or was the result of the Contractor's negligence. This shall not prejudice the right of the Government to appear in such suit, participate in defense, and take such action as may be necessary to protect the interests of the United States.

g. It is expressly agreed that the provisions contained in Sections c. through f. of this Clause shall not in any manner limit the liability or extent of liability of the Contractor as provided in Sections a. and b. of this clause.

h. In the event that the Contractor is indemnified, reimbursed or relieved for any loss or damage to Government property, it shall equitably reimburse the Government. The Contractor shall do nothing to prevent the Government's right to recover against third parties for any such loss or damage and, upon the request of the Contracting Officer, shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

* * *

[Endorsed]: Filed August 11, 1955.

Mr. Thornton: Respondent calls Rollin Greening.

ROLLIN E. GREENING

called as a witness on behalf of the respondent;
sworn.

The Court: State your name, please?

A. Rollin E. Greening.

The Court: How do you spell your first name?

A. R-o-l-l-i-n.

The Court: And your last name?

A. G-r-e-e-n-i-n-g. [65]

Direct Examination

By Mr. Thornton:

Q. What is your address, Mr. Greening?

A. 363 Foster Road, Napa, California.

Q. What is your present occupation?

A. Traffic manager for the A. L. Chipman Van and Storage Company of that city.

Q. And what was your occupation on the 14th of October, 1954, Mr. Greening?

A. I was the Post Transportation Officer at Benicia Arsenal.

Q. I call your attention to that day and ask you if you recall an injury which occurred to the libelant here, Mr. Harrison. A. Yes, sir.

Q. Will you state for the Court when Mr. Harrison's injury first came to your attention and under what circumstances?

A. I had been down to the pier, the dock, at the

(Testimony of Rollin E. Greening.)

beginning of the operation, at which time the skipper had asked me to go up to our mailroom and get the ship's mail, which had come in prior to the arrival of the ship.

Upon my return to the dock I was immediately told that there had been an accident on board the ship. I made the inquiries I could and found that the man had been taken to the dispensary. I followed up there and found he had been given first aid, after which I returned to the ship.

Q. What occurred on your return to the [66] ship?

A. I found that the operation had been stopped, and I was immediately requested to secure something to put on the decks of the ship because of the oily condition.

Q. Do you know who requested that of you?

A. I don't remember his name. It was one of the supervisors from the Oakland Army Base. They kept direct supervision of the operation itself.

Q. In compliance with that request, did you obtain some substance to cover the oil?

A. Yes, sir.

Q. What did you obtain?

A. Obtained sand from our sandblasting section of the ordnance shops.

Q. Was that the first request you had received for sand or sawdust? A. Yes, sir.

Q. How far was it from where the ship was docked to the place where the sand was obtained?

A. Approximately 300 yards.

(Testimony of Rollin E. Greening.)

Q. And upon obtaining the same, the operation was resumed, I suppose, is that correct?

A. Yes, sir.

Mr. Thornton: No further questions.

The Court: Any questions?

Mr. Sibbett: Yes, a couple. [67]

Cross-Examination

By Mr. Sibbett:

Q. You, of course, were an officer in the United States Army at the time? A. Yes, sir.

Q. Were you the top representative of the Army aboard that vessel on that morning or was there anybody above you?

A. As far as receiving cargo, I wasn't actively in charge as the operation itself was under the direct control of the Oakland Army Base and their representatives. I merely acted as liaison between the ordnance on my base and the Oakland Army Base to receive and to move out from under the hooks any and all cargo that was put on our dock.

Q. You don't recall whether there were any Oakland Army Base officers aboard the ship, do you?

A. I believe there was.

Q. Do you recall a conversation between the gang foreman, this Mr. Jensen here, and the walking boss of the ship and you? A. No, sir.

Q. In which the subject of sand or sawdust was mentioned?

A. No, sir, not prior to the accident.

(Testimony of Rollin E. Greening.)

Q. Do you know of any conversation that was had on this subject with any other officer aboard ship? A. No, sir.

Q. It could have happened, but there wasn't any so far as [68] you were concerned?

A. That is right.

Mr. Sibbett: That is all.

The Court: Any questions, Mr. Schaldach?

Mr. Schaldach: No, your Honor, no questions.

The Court: All right, that is all.

(Witness excused.)

Mr. Thornton: The respondent has no further witnesses. The respondent has no more exhibits to offer.

Mr. Schaldach may or may not object to a photo-static copy of a certificate of insurance issued by the Firemen's Fund to Jones Stevedoring Company.

Mr. Schaldach: Let me see it.

(Document handed to Mr. Schaldach.)

Mr. Schaldach: I will object to the introduction of this document which Mr. Thornton has on the ground it is incompetent, irrelevant and immaterial.

The Court: What is the purpose of it?

Mr. Thornton: Your Honor, the purpose of it is that this is a certificate of insurance which states that anything in the policy notwithstanding, "It is understood and agreed that the company waives all right of subrogation against the United States of

America which it might have by reason of payments under this policy.”

In other words, if the Court finds the United States is [69] liable, our interpretation is that it will not be necessary for the libelant to reimburse the compensation carrier for the amount he has received in compensation and medical.

Mr. Schaldach: I don't understand what you mean.

Mr. Thornton: Well, Mr. Schaldach, in the event of a judgment against the United States in this case, I understood you to say that the compensation carrier expects the libelant to repay the compensation already received and the medical.

Mr. Schaldach: I believe Mr. Sibbett stated something about that.

Mr. Sibbett: Well, this is a very complicated situation, Judge, insofar as this compensation and medical is concerned. Of course, there is no formal claim or lien on file. We usually have a gentlemen's understanding with the stevedoring company that they don't have to go to the trouble of filing a lien, if they will cooperate with us we will protect them on the lien.

The Court: It is apparently Mr. Thornton's contention that in the event of a recovery by the libelant there will not be taken from him this three or four hundred dollars according to this contract of insurance.

Mr. Schaldach: I don't have any objection to that, your Honor. What bothers me in this case is

this: There is a contract here in evidence which your Honor hasn't read.

The Court: I have read it in other cases. Isn't it the [70] same contract?

Mr. Schaldach: It is usually the same one, yes, your Honor. In the event of a holdover, if the Court does find against the Government and finds against us, against the Stevedoring Company, we have a right to a set-off of that amount. Certainly, that is my only objection to it.

The Court: I haven't seen this contract, but I have seen contracts in similar cases. Isn't it generally the holding on that contract that if the employee of the Stevedoring Company who is injured, or any other employee of the Stevedoring Company, is in any way partially responsible for the happening of the accident, that the Stevedoring Company pays the entire judgment?

Mr. Schaldach: Subject to certain limitations, yes, that is generally it. The language is "in whole or in part," but there are various clauses there which have to be read in their entirety.

The Court: I know. And the only way your company is not liable under the contract is if this Court would hold that the United States was solely responsible for the accident?

Mr. Schaldach: Right. Or that the stevedore was solely responsible, in which event there would be no recovery against anyone.

The Court: If there is a recovery and the United States is held solely responsible, then you will be eliminated? [71]

Mr. Schaldach: That's true.

The Court: But if the responsibility is partly on the United States and partly the libelant, then under your contract you are required to pay it all?

Mr. Schaldach: It's not that simple, your Honor. There are other clauses in there which have to do with unseaworthiness which was not caused by the contractor.

The Court: I think I understand.

Mr. Sibbett: Our position on the compensation and medical expense is this, Judge: If your Honor is disposed to award damages to the libelant in this case, your Honor should decide whether or not the libelant does have to repay this money. If he does not, then you compute his award on a certain basis. If he does have to pay it back, there should be added to whatever your Honor feels he is entitled to an additional sum of \$300 or whatever it is.

The Court: I haven't seen the exhibit yet.

Mr. Schaldach: I will stipulate to this, your Honor—if it is agreeable to you gentlemen: In the event that there is a judgment against the Government and no right over against the Stevedoring Company, I will stipulate that I want no return of any compensation or medical!

The Court: Is that stipulated?

Mr. Sibbett: All right.

Mr. Schaldach: And if there is a judgment against the [72] Government and the Court finds over against Jones Stevedoring Company, we are entitled, under the cases, to credit.

The Court: All right. Well, we will admit this document and mark it United States Exhibit C.

(Whereupon, contract of insurance was received in evidence and marked Respondent's Exhibit C.)

The Court: But that is the stipulation between the parties as stated by Mr. Schaldach?

Mr. Sibbett: Yes, that is satisfactory.

Mr. Thornton: Your Honor, before resting I should like to submit the respondent's memorandum of points and authorities. And at that point the Government rests.

Mr. Schaldach: We have no witnesses. We rest, your Honor, also.

The Court: Do you want to argue the matter, Mr. Sibbett?

Mr. Sibbett: Yes, Judge, just very briefly.

(Thereupon, closing arguments were presented by respective counsel.)

Certificate of Reporter

I, Official Reporter and Official Reporter pro tem, certify that the foregoing transcript of 73 pages is a true and correct transcript of the matter therein contained as reported by me and thereafter reduced to typewriting, to the best of my ability.

/s/ KENNETH J. PECK.

[Endorsed]: Filed January 18th, 1956.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD
ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibits, listed below, are the originals filed in the above-entitled case and that they constitute the record on appeal herein as designated by the attorneys for the appellant:

Libel.

Amendment to Libel.

Respondent's Answer.

Petition to bring in Third Party.

Answer to Petition.

Order.

Findings of Facts and Conclusion of Law.

Decree.

Notice of Appeal.

Respondent's Designation to Record on Appeal.

Statements on Points upon which Appellant intends to rely.

Additional designation of impleaded respondent.

Reporter's transcript.

In witness whereof, I have hereunto set my hand and affixed the seal of this Court, this 5th day of March, 1956.

[Seal]

C. W. CALBREATH,

Clerk;

By /s/ WM. J. FLYNN,

Deputy Clerk.

[Endorsed]: No. 15054. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Benjamin Harrison and Jones Stevedoring Company, Appellees. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed March 5th, 1956.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit
No. 15054

THE UNITED STATES OF AMERICA,
Appellant,

vs.

BENJAMIN HARRISON and JONES STEVE-
DORING COMPANY,
Appellees.

APPELLANT'S STATEMENT OF POINTS ON
WHICH IT INTENDS TO RELY AND DES-
IGNATION OF THE RECORD WHICH IS
MATERIAL

Appellant hereby adopts as points on which it intends to rely on appeal, the Statement of Points Upon Which Appellant Intends To Rely filed in the court below on March 1, 1956, appearing in the typewritten transcript of record.

Appellant hereby adopts as its designation of all the record which is material to the consideration of its appeal, the Designation of Portions of the Record, Proceedings and Evidence To Be Contained in the Record on Appeal filed in the court below on March 1, 1956, appearing in the typewritten transcript of record.

LLOYD H. BURKE,
United States Attorney;

/s/ KEITH R. FERGUSON,
Special Assistant to the
Attorney Gen.

Affidavit of mail attached.

[Endorsed]: Filed March 8th, 1956.